TEXAS REGISTER

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Cristina Garcia

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 6, 2008

Appointed to the Texas Funeral Services Commission for a term to expire February 1, 2013, Norberto Salinas of Mission (replacing Martha Greenlaw Stine of Houston whose term expired).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2013, Paul Schneider of Richardson (replacing Frances Shannon of Spring Branch who resigned).

Appointed to the Communities in Schools Advisory Committee for a term to expire at the pleasure of the Governor, Stacee P. Bell of Horseshoe Bay (replacing Rosa Linda Navejar of Fort Worth).

Appointments for February 8, 2008

Designating Carlos Luis Garcia of Brownsville as Presiding Officer of the Automobile Burglary and Theft Prevention Authority for a term at the pleasure of the Governor. Mr. Garcia is replacing Michael Gerik of Waco as presiding officer of the board.

Appointed to the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2013, Timothy Timmerman of Austin (replacing Ray Wilkerson of Austin whose term expired).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2013, Michael Northcutt of Longview (Mr. Northcutt is being reappointed).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2013, Cesar Maldonado of Harlingen (replacing Connie de la Garza of Harlingen whose term expired).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2013, Eugene Seaman of Corpus Christi (replacing Jerilyn Pfeiffer of Fort Worth whose term expired).

Appointed to the Automobile Burglary and Theft Prevention Authority for a term to expire February 1, 2011, Kenneth Ross of Houston (replacing Michael Gerik of Waco whose term expired).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2008, Lamont Meaux of Stowell (replacing Shirley Seale of Anahuac whose term expired).

Appointment for February 11, 2008

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2011, Conrado de la Garza of Harlingen (replacing R.C. Allen of Corpus Christi whose term expired).

Rick Perry, Governor

TRD-200800838

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0669-GA

Requestor:

The Honorable James L. Anderson, Jr.

Aransas County Attorney

301 North Live Oak Street

Rockport, Texas 78382

Re: Whether the appointment of a county court-at-law judge strips a county judge of his powers as "magistrate" (RQ-0669-GA)

Briefs requested by February 29, 2008

RQ-0670-GA

Requestor:

The Honorable Will Hartnett

Chair, Committee on Judiciary

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a rule of the Department of Family and Protective Services conflicts with section 42.041(a), Human Resources Code, which requires a license to operate a child-care facility (RQ-0670-GA)

Briefs requested by March 10, 2008

RQ-0671-GA

Requestor:

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Whether a county may permit a property owner, for on-site sewage disposal purposes, to combine adjacent tracts of land without the necessity of replatting (RQ-0671-GA)

Briefs requested by March 10, 2008

RQ-0672-GA

Requestor:

Mr. Robert A. Almon

Cameron County Auditor

Post Office Box 3846

Brownsville, Texas 78520

Re: Whether a county's alleged underpayment to indigent health care providers is an unconstitutional debt for purposes of article XI, section 7, of the Texas Constitution (RQ-0672-GA)

Briefs requested by March 13, 2008

RQ-0673-GA

Requestor:

Ms. Kathleen T. Jackson, Chair

Lower Neches Valley Authority

Post Office Box 5117

Beaumont, Texas 77726-5117

Re: Whether members of the board of directors of the Lower Neches Valley Authority may participate in the Authority's health care plan (RQ-0673-GA)

Briefs requested by March 13, 2008

RQ-0674-GA

Requestor:

The Honorable Billy W. Byrd

Upshur County Criminal District Attorney

405 North Titus Street

Gilmer, Texas 75644

Re: Whether a justice of the peace may serve as a court-appointed criminal defense attorney (RQ-0674-GA)

Briefs requested by March 13, 2008

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800823
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 12, 2008

♦ ♦ ♦

Opinion

Opinion No. GA-0601

The Honorable Keri Roberts

Mills County Attorney

Post Office Box 160

Goldthwaite, Texas 76844

Re: Whether Mills County may fund the Fox Crossing Water District (RQ-0615-GA)

S U M M A R Y

The Fox Crossing Water District (the "District"), a special-law conservation and reclamation district, is authorized to impose taxes and fees and collect other revenues generated by its operations. No statutory provision, however, prohibits the District from funding all its operation and maintenance expenses from other revenues such as grants, gifts, loans, or other revenues received from other sources, including Mills County, Texas (the "County"), if the source can legally provide the funds. But no constitutional provision or statute authorizes the County to pay for all of the District's maintenance and operation expenses.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200800839

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 13, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

4 TAC §§19.410 - 19.413

The Texas Department of Agriculture (the department) proposes new §§19.410 - 19.413, concerning a quarantine for the Asian citrus psyllid, *Diaphorina citri* Kuwayama. The new sections are proposed to prevent the artificial spread of the Asian citrus psyllid both in the non-infested counties of Texas and into the non-citrus producing states of the United States. The new sections prohibit movement of the Asian citrus psyllid host plants into citrus-producing states of the United States. Movement of the host plants in the non-infested counties of Texas and into non-citrus producing states of the United States requires application of prescribed insecticidal treatments.

The Asian citrus psyllid is a relatively new pest in Texas. A statewide survey conducted by the Texas A&M University scientists in 2006-2007 showed presence of this psyllid in 32 Texas counties. The psyllid causes damage to citrus crops primarily by transmitting the pathogen, which causes one of the most damaging diseases of citrus called citrus greening. This disease is not known to occur in Texas; however, it occurs in the state of Florida.

On November 2, 2007, the Animal and Plant Health Inspection Service (APHIS) agency of the United States Department of Agriculture (USDA) issued a Federal Order titled, "Expansion of the quarantines for citrus greening and Asian citrus psyllids," which quarantined 32 Texas counties for the Asian citrus psyllid. Furthermore, the Federal Order required the department to establish a parallel quarantine by December 1, 2007, and stated that failure to do so would result in APHIS quarantining the entire state of Texas. Consequently, the department filed an Asian citrus psyllid emergency quarantine, new §§19.410 - 19.413, on November 29, 2007, which was published in the *Texas Register* on December 14, 2007 (32 TexReg 9185) and is now in effect. The quarantine requirements proposed in new §§19.410 - 19.413 are identical to the emergency quarantine now in effect.

To avoid APHIS's statewide quarantine, the department believes establishment of a quarantine for the 32 counties on a permanent basis, is both necessary and appropriate. The proposed quarantine takes necessary steps to prevent the artificial spread of the psyllid both in the non-infested counties of Texas and into those states into which the Federal Order allows the psyllid host material to enter. Preventing artificial spread of the psyllid into non-infested counties of Texas would delay spread of citrus greening when and if the disease is found in Texas. Furthermore, preventing artificial spread of the psyllid becomes especially important since the disease can remain latent for several years and could be spread without detection.

New §19.400 defines the quarantined pest. New §19.411 designates the infested areas subjected to the quarantine. New §19.412 lists the articles subject to the quarantine. New §19.413 prescribes requirements for movement of the quarantined articles from the quarantined area to a free (non-infested) area.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Mr. Nilakhe also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to prevent artificial spread of the psyllid into the psyllid-free counties of Texas. There will be an insecticidal treatment cost to the commercial citrus nursery growers located in the proposed quarantined area to ship the psyllid host plants outside the quarantined area. Of the 18 commercial citrus nurseries, which operate in Texas, nine are located in the quarantined area. Further, it is estimated that 89 percent (240,000) of the 275,000 citrus nursery plants produced annually in Texas, are grown in the quarantined area. The 275,000 citrus nursery plants total excludes plants produced at two nurseries located in the quarantined area, which do not ship plants outside the quarantined area, but produce plants only to establish citrus orchards in the quarantined area. It is also estimated that 70 percent (168,000) of the 240,000 plants produced in the quarantined area are shipped outside the quarantined area. The citrus plants are generally sold in a 3-gallon or a 5-gallon container. The new section requires a drench and a foliar spray to ship the plants outside the quarantined area. The insecticide and labor cost to apply a drench and a foliar spray treatment to one containerized plant is estimated to be $0.15 and $0.09, respectively. Thus the treatment cost to ship 168,000 plants outside the quarantined area will be $40,320 (168,000 X $0.24 per plant). Costs of treatment are estimated. The department is working with USDA-APHIS to find effective, lower costs insecticides for use by producers in meeting requirements of the quarantine.

Of the nine citrus nurseries located in the quarantined area, two do not ship plant outside the quarantined area, three are large businesses, and four nurseries meet the criterion of a small business mentioned in the Texas Government Code §2006.001(2). It is estimated that these four nurseries account for ten percent or

smaller portion of the 168,000 plants shipped outside the quarantined area. Thus the economic impact (treatment cost) to these four nurseries will be approximately $4,032 or less. The four nurseries also meet the criterion of a micro-business as defined under the Texas Government Code §2006.001(1). Therefore, the economic impact to a small business or a micro-business would be identical. The businesses will not require any special equipment since they normally possess sprayers to apply pesticides. Government Code, §2006.002, as amended by House Bill 3430, 80th Legislative Session, 2007, requires that before adopting a rule that may have an adverse economic effect on small businesses, a state agency must prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses, as provided above, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of a rule. As provided in guidelines established by the Office of the Attorney General, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the health, safety and environmental and economic welfare of the state. Federal mandates are considered to be *per se* consistent with the health, safety, or environmental and economic welfare of the state. Because new §§19.410 - 19.413 are required by a Federal mandate, a Regulatory Flexibility Analysis is not required.

Comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.410. Quarantined Pest.

The quarantined pest is the Asian citrus psyllid, *Diaphorina citri* Kuwayama, in any living stage of development.

§19.411. Quarantined Areas.

The quarantined areas are:

(1) the states of Florida and Hawaii, the entire territory of Guam and the Commonwealth of Puerto Rico;

(2) the Texas counties of Aransas, Atascosa, Bee, Bexar, Brazoria, Brooks, Caldwell, Cameron, Dimmit, Duval, Harris, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, Matagorda, Maverick, McMullen, Nueces, Refugio, San Patricio, Starr, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Willacy, and Zapata; and

(3) any other area infested with the Asian citrus psyllid.

§19.412. Quarantined Articles.

All plants, budwood, cuttings, or other fresh or live plant parts except seed and fruit of species that are hosts of Asian citrus psyllid: *Aegle marmelos, Aeglopsis chevalieri, Afraegle gabonensis, Afraegle paniculata, Atalantia* spp., *Balsamocitrus dawei, Bergera (=Murraya) koenigii, Calodendrum capense, X Citrofortunella microcarpa, X Citroncirus webberi, Citropsis schweinfurthii, Citrus* spp., *Clausena anisum-olens, Clausena excavata, Clausena indica, Clausena lansium, Eremocitrus glauca, Eremocitrus hybrid, Fortunella* spp., *Limonia acidissima, Merrillia caloxylon, Microcitrus australasica, Microcitrus australis, Microcitrus papuana, X Microcitronella 'Sydney', Murraya* spp., *Naringi crenulata, Pamburus missionis, Poncirus trifoliata, Severinia buxifolia, Swinglea glutinosa, Toddalia asiatica, Toddalia lanceolata, Triphasia trifolia, Vepris lanceolata, and Xanthoxylum fagara.*

§19.413. Restrictions.

(a) General. While fresh fruit is not a quarantined article, fruit moved from areas quarantined for the Asian citrus psyllid to citrus producing areas where the Asian citrus psyllid is not present (Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, Puerto Rico, Virgin Islands, and those areas of Texas not quarantined for the psyllid) must have been cleaned using normal packinghouse procedures. Quarantined articles originating from quarantined areas are prohibited entry into or through free areas of Texas, except as provided in subsection (b) of this section.

(b) Exceptions. To be eligible to move from quarantined areas, quarantined articles must meet the following requirements.

(1) Requirements to move from quarantined areas of Texas to free areas of Texas.

(A) Quarantined articles must be treated using products approved by the United States Environmental Protection Agency (EPA) and the department for use in nurseries. Persons applying treatments must follow the product label, its applicable directions, and restrictions and precautions, including statements pertaining to Worker Protection Standards;

(B) All quarantined articles must be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to shipping and also be treated with a foliar spray with a product containing, either acetamiprid, chlorpyrifos, or fenpropathrin as the active ingredient within 10 days prior to movement. The drench and foliar spray must be applied at the rate designated for the Asian citrus psyllid on the product. Additional active ingredients may be approved upon consultation with the United States Department of Agriculture (USDA);

(C) In the case of fresh curry leaf (*Bergera (=Murraya) koenigii*) leaves intended for consumption, instead of the treatments specified in subparagraph (B) of this paragraph, the leaves must be treated prior to the movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and safeguarded until export. This information can be found on page 5-2-28 of the treatment manual, located on-line at: http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf

(D) Any person engaged in the business of growing or handling quarantined articles must enter into a compliance agreement with the department if the quarantined articles are to be moved to free areas of Texas.

(2) Requirements to move from quarantined areas of Texas to other states.

(A) The quarantined articles may not be moved to Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, and the Virgin Islands of the United States.

(B) Businesses must enter into a compliance agreement with APHIS to move quarantined articles to states and territories other than those listed in subparagraph (A) of this paragraph.

(C) Compliance agreements may be arranged by contacting a local office of the Plant Protection and Quarantine (PPQ), APHIS in Texas or the Texas State Plant Health Director, PPQ-APHIS at 903 San Jacinto Blvd., Suite 270, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800799
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER C. MEMBERS

7 TAC §91.301

The Credit Union Commission proposes amendments to §91.301, concerning Field of Membership. The proposed amendments to §91.301 add a new subsection granting the commissioner the authority to approve field of membership expansions that have been approved by the National Credit Union Administration. A second new subsection formalizes the criteria needed to add a Group to a credit union's field of membership. In addition, the amendments clarify that credit unions have the option to include businesses and other organizations whose employees are within the Group in its field of membership unlike other entities that must receive separate expansion approval. Finally, the amendments eliminate some redundant overlap language and make grammatical and technical corrections to the rule.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 2, 2008 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.051, concerning membership.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.051.

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited [~~Approval of Field of Membership. State credit unions will be allowed to have, as a minimum, at least as much flexibility as federal credit unions in the regulation of fields of membership. The commissioner may approve a state credit union's field of membership under its original articles of incorporation and bylaws or pursuant to a request for approval of an amendment of its bylaws~~] to one or more [~~include~~] groups, each of which (the Group) has its own community [~~with a communities~~] of interest and is [~~(Group) that are~~] within the credit union's local service area. In this section, local service area shall mean an area that is within reasonable proximity of a credit union's office, and allows [~~allowing~~] members to be realistically served from that office. For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:

(1) A majority of the persons in the Group live, work, or gather regularly within [~~with~~] the local service area;

(2) The Group's headquarters is located within the local service area; or

(3) The persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area. The commissioner may impose a geographical limitation on any Group [~~field of membership~~] if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing [~~ability~~] to serve a larger group or there are other operational or management concerns.

(b) Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:

(1) members of the family or household of a member of the Group;

(2) volunteers performing services for or on behalf of the Group;

(3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;

(4) spouses [~~spouse~~] of persons who died while in the Group;

(5) employees of the credit union;

(6) subsidiaries of the credit union and their employees [~~unions~~]; and businesses and other organizations whose employees or members are within the Group.

[(7) corporate or other legal entities.]

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation [incorporations] and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) Overlap protection.

(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more. [An overlap is permitted for a Group of less than 3,000 members or when the expansion's beneficial effect in meeting the convenience and needs of the members of a Group of 3,000 members or more outweighs any adverse effect on the overlapped credit union(s).]

(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility, complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." [Generally, overlap protection will not be considered warranted unless the financial effect on the overlapped credit union will present a safety and soundess concern.] Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.

(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:

(A) whether the overlap is incidental in nature, ie., the group(s) in question is so small as to have no material effect on the overlapped credit union;

(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;

(C) whether the overlapped credit union provides requested service;

(D) the financial effect on the overlapped credit union;

(E) the desires of the group(s); and

(F) the best interests of the affected group(s) and the credit union members involved.

(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.

(e) Underserved communities.

(1) All credit unions may include underserved areas in their fields of membership, without regard to location[, communities satisfying the definition for underserved areas]. More than one credit union can serve the same underserved area.

(2) Once an underserved area has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the community. For the purposes of this subsection, service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or a credit union's Internet website.

(3) A credit union desiring to add an underserved area must document that the community meets the definition. In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved [unserved] area.

(f) Parity with Federal Credit Unions. Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.

(g) Application. In order to request the approval of the commissioner to add a Group to its bylaws, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:

(1) Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;

(2) The ability of credit unions to maintain parity and to compete fairly with their counterparts;

(3) Service by the credit union that is responsive to the convenience and needs of prospective members;

(4) Protection for the interest of current and future members of the credit union; and

(5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800796
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 837-9236

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7 TAC §91.302

The Credit Union Commission proposes amendments to §91.302, Election or Other Vote By Electronic Device, Absentee Ballot, or Mail Ballot. The proposed amendments to §91.302 change the title of the section to Election or Other Membership Vote by Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting. The amendments also include provisions on early voting and encourage credit unions to promote member participation in elections and other membership votes. Additional amendments provide that early or absentee ballots must be received prior to the beginning of the meeting, eliminating the five calendar day requirement, and make grammatical and technical amendments.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, May 2, 2008 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.052, which directs the commission to establish rules for conducting mail and electronic balloting.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.052.

§91.302. Election or Other Membership Vote By Electronic Balloting, Early Voting [~~Device~~], Absentee Voting [~~Ballot~~], or Mail Balloting [~~Ballot~~].

(a) All credit unions should actively promote member participation in elections and other membership votes as long as the costs are reasonable and the integrity of the vote is not compromised. Any credit union instituting alternative procedures or systems to benefit members who find it difficult or inconvenient to vote at annual or special meetings must ensure that the alternative is thoroughly explained and publicized so that all members will be able to take advantage of those procedures or systems.

(b) [~~(a)~~] The board of directors, before holding an election or other membership vote [~~by the membership~~] that uses [~~utilizes an~~] electronic balloting, early voting [~~device~~], absentee voting [~~ballot~~], or mail balloting [~~ballot~~], shall establish written election rules, including procedures to: control, tabulate and retain ballots; identify [~~capture~~] invalid ballots; and handle disputed election results and tie votes.

[~~(b) The use of an electronic device, absentee or mail ballot by any credit union shall ensure fair and equitable opportunity for any qualified member to seek office, including a provision for nomination by petition, and providing the appropriate notice and information to all members.~~]

(c) Any elections or other membership vote using [~~held by~~] electronic balloting, early voting, absentee voting, [~~device~~] or mail balloting [~~ballot~~] are subject to the following conditions:

(1) The election tellers shall be appointed by the board of directors;

(2) At least 30 days prior to the annual or special meeting, the board of directors will cause either a printed ballot or notice of a ballot, along with appropriate instructions, to be mailed to all members eligible to vote;

(3) Completed electronic or mail ballots cast during early or absentee voting [~~Ballots~~] must be received prior to convening [~~no later than midnight 5 calendar days prior to~~] the annual or special meeting;

(4) The votes will be tallied by the tellers and the results of the vote will be made public at the annual or special meeting.

(d) In the event of a malfunction of the electronic balloting system, the board of directors may in its discretion order elections or other vote to be held by mail ballot only. The board may make reasonable adjustments to the voting time frames in subsection (c) of this section, or postpone the annual or special meeting if necessary, to complete the elections prior to the annual or special meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800797
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 837-9236

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1, 3.2, 3.4, 3.6

The Texas State Library and Archives Commission (TSLAC) proposes to amend 13 TAC §§3.1, 3.2, 3.4 and 3.6 regarding the State Publications Depository Program. Recently, the commission changed the technology that powers the Texas Record and Information Locator (TRAIL) system. The new platform for TRAIL provides a better basis for comprehensive searching and archiving Internet-based publications. The new technology requires rule modifications to insure more comprehensive capture of state government information.

Proposed amendments to §3.1 update definitions of terms. Proposed amendments to §3.2 clarify when new versions of a document must be deposited through the program. Proposed amendments to §3.4 update procedures TSLAC and state agencies follow to enable their Internet-based publications to be searched and archived under the new TRAIL technology. Proposed amendments to §3.6 exempt certain state publications from deposit.

Division director Beverley Shirley has determined that, for the first five years the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended sections.

Ms. Shirley also has determined that, for each of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section will be to increase long-term access to state publications that are published on the Internet. There are no cost implications to either small businesses or persons required to comply with the proposed amended sections.

Written comments on the proposed amended sections may be submitted to Beverley Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, P. O. Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The amendments are proposed under Government code §441.102 which authorizes the commission to adopt rules "for the distribution of state publications to depository libraries and for the retention of those publications", and to "establish and maintain a system, named the 'Texas Records and Information Locator,' or 'TRAIL,' to allow electronic access, including access through the Internet, at the Texas State Library and other depository libraries to state publications that have been made available to the public through the Internet by or on behalf of a state agency."

The amended section as proposed affects Government Code, §§441.101 - 441.105.

§3.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency Advisory Committee--The advisory committee for the TRAIL grants database program authorized by Government Code §441.010(e).

(2) Commission--The Texas State Library and Archives Commission.

(3) Complex relational database--A database comprised of multiple inter-related tables that is dynamically updated, that contains only minimal narrative text, and that cannot be accurately represented as a set of static HTML pages or a spreadsheet.

(4) [~~(3)~~] Depository library--Any library that the Director and Librarian or the commission designates as a depository library for state publications.

(5) [~~(4)~~] Depository publication--A state publication in any format distributed from or on behalf of the Texas State Library and Archives Commission to a depository library.

(6) [~~(5)~~] Director and Librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

(7) [~~(6)~~] Electronic external storage devices--Removable electronic media used to store and transfer electronic information.

(8) [~~(7)~~] Electronic format--A form of recorded information that can be processed by a computer.

(9) [~~(8)~~] Grant--shall have the meaning given in Government Code §441.010(a)(2).

(10) [~~(9)~~] Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(11) [~~(10)~~] Internet publication--A publication that is [~~that~~] published on the Internet as a file or files accessible by Internet connection.

(12) [~~(11)~~] On-line--Accessible via a computer or terminal, rather than on paper or other medium.

(13) [~~(12)~~] Physical format--A tangible system for the compilation and presentation of information, including print publications and electronic external storage devices as defined in this chapter.

(14) [~~(13)~~] Print publication--a publication

(A) that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that are not specifically cited in this definition, and

(B) that is not an Internet publication as defined in this section.

(15) [~~(14)~~] Public Advisory Committee--The advisory committee for the TRAIL grants database authorized by Government Code §441.010(g).

(16) [~~(15)~~] Publicly distributed--Provided to persons outside of the agency, in print or other physical medium, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency. Information that is made accessible only through an authentication process, such as a user name and password, or upon request via open records laws, is not deemed publicly distributed.

(17) [~~(16)~~] Serial--Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.

(18) Site map--An HTML page providing links to all materials available to the public on a Web site. A site map can provide links to sections or categories within a Web site rather than to each individual document if all documents within each section are inter-linked.

(19) [~~(17)~~] State agency--Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

(20) [~~(18)~~] State publication--Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency, and is publicly distributed by or for the agency. The term does not include information the distribution of which is limited to contractors with or grantees of the agency, persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552 if it does not otherwise meet the definition of a state publication.

(21) [~~(19)~~] State Publications Depository Program--A program of the Texas State Library and Archives Commission designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(22) Substantive change--A modification of a state publication in any format that represents a fundamental alteration in the information content of a publication. Examples of a substantive change include but are not limited to:

(A) changes to publicly distributed agency information based on the installation of new leadership in a state agency;

(B) amendments to agency policies (such as reversals of former policies; expansions of authority via statutory means, rule-making authority, or judicial process; or clarifications of existing policies);

(C) provision of new information, such as information reports; and

(D) revisions to previously issued information, such as documents describing the financial status, providing statistical data, or reporting on matters within the agency's area of authority.

(23) [~~(20)~~] Texas Records and Information Locator (TRAIL)--A program of the Texas State Library and Archives Commission designed to locate, index, and make available state publications in electronic format.

(24) [~~(21)~~] Texas State Library and Archives Commission--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(25) Transitory or inconsequential change--A modification of a state publication in any format that represents a minor alteration of the publication and does not alter the essential content of the original publication. A transitory or inconsequential change includes but is not limited to: correction of misspellings or typographical errors and the alteration of an Internet publication due to the expiration of textual information that is linked to time-dependent publications (such as press releases or announcements regarding the activities of an agency's programs).

(26) [~~(22)~~] Uniform Resource Locators--The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

§3.2. Standard Requirements for State Publications in All Formats.

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the State Publications Depository Program in §3.6 of this title (relating to Standard Exemptions for State Publications in All Formats) or under §3.7 of this title (relating to Special Exemptions).

(b) When a state publication is distributed to the public in multiple formats simultaneously, state agencies are required to provide access to or copies of that publication to the commission in all formats in which the publication is publicly distributed. State agencies are not required to provide copies to the commission of publications on electronic external storage devices if the state publications are made available by an Internet connection.

(c) When a state publication changes frequently, as in the case of an Internet publication that announces time-dependent information, state agencies are required to determine whether the alteration in the publication represents a substantive change or a transitory or inconsequential change. If the modification is a substantive change, the original version and the new version must be treated as separate publications and managed in accordance with §3.4 of this chapter (relating to Standard Deposit and Reporting Requirements for State Publications that are Internet Publications). If the modification is a transitory or inconsequential change, or if the modification is due only to changes to information that is exempt under §3.6 of this chapter (relating to Standard Exemptions for State Publications in All Formats), the two versions are not deemed to be separate publications.

(d) [~~(c)~~] Records retention. State agencies are reminded that compliance with this chapter does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.

(e) [~~(d)~~] Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.

§3.4. Standard Deposit and Reporting Requirements for State Publications that are Internet Publications.

For state publications available to the public by an Internet connection:

(1) State agencies are required to provide the Texas State Library and Archives Commission with guaranteed access, at no charge, to the agencies' Internet publications. If a "robots.txt" file is used to prevent harvesting of a State Agency site then that file must include an exception for harvesting by TSLAC's designated harvesting system;

(2) State agencies must meet the following minimum requirements when providing state publications by Internet connection:

(A) Accessibility. State publications made available by an Internet connection shall be accessible:

(i) by anonymous File Transfer Protocol (FTP), [~~Telnet, Gopher,~~] Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(ii) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.6 of this chapter [~~by a Uniform Resource Locator (URL) provided by the agency that describes each Internet publication's specific name and location on the Internet~~]; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Availability. Each original Internet publication and subsequent versions as described in §3.2(c) of this chapter must remain available at some location on the agency Web site for six months after its initial release to ensure that the publication has been collected by TSLAC and made available in the TRAIL archive. Agencies can confirm that a version of an Internet publication has been added to the TRAIL archive by searching at www.tsl.state.tx.us.

[~~(B) Indexing. Indexed Internet publications shall be accessible through indexes that meet current ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standards and that adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.~~]

[~~(C) Availability. Issues of a serial Internet publication and current versions only of all other Internet publications shall be accessible on-line by Internet connection for two years from the date of release or last modification with an average availability by the Internet connection of 23 out of 24 hours, seven days a week.~~]

[~~(D) Supercession. For Internet publications that are updated as needed to keep information accurate, or that are replaced by other publications, the superceded versions must remain available by Internet connection.~~]

(3) Each state publication made available by Internet connection must include descriptive information in:

(A) a Title tag;

(B) a Description or DC.Description meta tag that includes a narrative description of the publication, and[~~;~~]

(C) a Keyword or DC.Subject.Keyword meta tag that includes selected terms from within the publication.[~~; ~~]

[~~(D) a Subject or DC.Subject meta tag that includes terms from the TRAIL subject list;~~]

[~~(E) a Type or DC.Type meta tag that includes terms from the TRAIL publication type list. This tag may be omitted if the appropriate type for the publication is "Web documents - Undefined."~~]

(4) State agencies are advised to review the rules in 1 TAC §206.5 (relating to Linking and Indexing State Web Sites).

(5) TSLAC shall create a searchable index of state agency Internet publications that shall be accessible in compliance with the ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standard or successor standards, and that shall adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

§3.6. Standard Exemptions for State Publications in All Formats.

The Director and Librarian has exempted from deposit requirements certain kinds of state publications. A state agency is not required to deposit or provide access to these state publications:

(1) agendas;

(2) advertisements;

(3) alumni materials;

(4) announcements;

(5) artwork;

(6) calendars;

(7) complex relational databases;

(8) [~~(7)~~] contracts;

(9) [~~(8)~~] correspondence;

(10) [~~(9)~~] course schedules;

(11) [~~(10)~~] curriculum catalogs (departmental only)

(12) [~~(11)~~] drafts of plans, reports;

(13) [~~(12)~~] fiction;

(14) [~~(13)~~] forms;

(15) [~~(14)~~] fund raising materials;

(16) [~~(15)~~] grant proposals, bids;

(17) [~~(16)~~] hearings (transcripts of);

(18) [~~(17)~~] job listings;

(19) [~~(18)~~] literary criticisms;

(20) [~~(19)~~] memorabilia;

(21) [~~(20)~~] memoranda (including e-mail);

(22) [~~(21)~~] news or press releases (exemption applies to physical formats only);

(23) [~~(22)~~] newsletters and subscriber lists meant only for employee, faculty or student use;

(24) [~~(23)~~] notices of sale;

(25) [~~(24)~~] opinions and orders issued by state courts;

(26) [~~(25)~~] daily or weekly periodicals (that are summarized in monthly or quarterly publications);

(27) [~~(26)~~] personnel manuals;

(28) [~~(27)~~] photographs;

(29) [~~(28)~~] poetry;

(30) [~~(29)~~] policy handbooks intended only for internal use;

(31) [~~(30)~~] programs (announcements of events, training sessions);

(32) [~~(31)~~] recruitment materials;

(33) [~~(32)~~] reprints (reissued without change);

(34) [~~(33)~~] stationery;

(35) [~~(34)~~] student publications (those produced by students);

(36) [~~(35)~~] telephone directories meant only for employee, faculty, or student use; [~~and~~

(37) unedited compilations of data or information submitted via forms or other means from individuals or entities under the regulation of a state agency; and

(38) [~~(36)~~] volunteer newsletters.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800800
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.213

The Public Utility Commission of Texas (commission) proposes new §25.213, relating to Metering for Distributed Renewable Generation. The proposed new rule will establish a definition for metering as it relates to interconnected distributed renewable generation. The provision of metering as required by the new rule will satisfy the requirements for metering pursuant to Public Utility Regulatory Act (PURA) §39.914(d) and §39.916(f). This threshold issue is being taken up first in Project Number 34890 in order to provide sufficient clarity for the Electric Reliability Council of Texas (ERCOT) to begin development of profiles needed to settle sales of distributed renewable generation by January 1, 2009 as set forth by PURA §39.916(j). The remainder of Project Number 34890 will be completed in the fourth quarter of 2008. This proposed new rule is a competition rule subject to judicial review as specified in PURA §39.001(e).

David Smithson, Policy Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section.

Mr. Smithson has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of the owners of distributed renewable generation to sell their surplus generation to retail electric providers who in turn will be able to benefit from the purchase of this generation in connection with the settlement of energy and capacity purchased and sold in the wholesale market. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is some anticipated economic cost to owners of distributed renewable generation, as stipulated in PURA §39.916, limited to the differential cost for metering as described in subsection (b)(1) of the proposed rule.

Mr. Smithson has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, March 13, 2008, at 9:30 a.m. The request for a public hearing must be received within 10 days after publication.

In addition to comments on the proposed rule, the commission requests interested persons to file comments in response to the following question:

Should there be a standard tariff for transmission and distribution utilities, excluding river authorities, for the provision of metering for distributed renewable generation?

Comments on the proposed rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. All comments should refer to Project Number 34890.

This rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction (PURA §12.001), and, in particular, PURA §38.002, which authorizes the commission to adopt standards relating to measurement, quality of service, and metering standards, PURA §39.101(b)(3), which provides the commission the authority to adopt and enforce rules relating to customers' right of access to on-site distributed generation, PURA §39.914, which provides for the sale of surplus electricity produced by a public school building's solar electric generation

panels, and PURA §39.916, which directs the commission to establish standards for distributed renewable generation.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 38.002, 39.101, 39.914, and 39.916.

§25.213. Metering for Distributed Renewable Generation.

(a) Application. This section applies to metering provided by transmission and distribution utilities, excluding river authorities, to owners of distributed renewable generation.

(b) Metering.

(1) Upon request by a customer that has, or is in the process of installing distributed renewable generation on the customer's premises and that desires to measure the generation's surplus electricity production, a transmission and distribution utility shall provide metering at the point of common coupling using one or two meters that separately measure both the customer's electricity consumption from the distribution network and the surplus generation that is delivered from the customer's premise to the distribution network and separately report each metered value to the transmission and distribution utility. The two metered values should be separately accounted for by the transmission and distribution utility.

(2) In its tariff, a transmission and distribution utility may charge for the customer's electricity consumption from the distribution network.

(3) A transmission and distribution service provider shall not provide metering for purposes of PURA §39.914(d) and PURA §39.916(f), that is inconsistent with paragraph (1) of this subsection, unless ordered by the commission.

(4) The distributed renewable generation owner shall pay the differential cost of the metering unless the meters are provided at no additional cost.

(5) Transmission and distribution service providers shall file tariffs for metering under this section within 60 days of its effective date.

(6) Owners of distributed renewable generation may begin selling surplus generation on January 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800750
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors after January 1, 2005.

The amendment to §523.132 will delete "after January 1, 2005" from the title of the section; add the text "The" to the beginning of subsection (a); delete the following text "Effective January 1, 2005, the" and "after January 1, 2005" from subsection (a); in subsection (a)(1) after the text "Texas" insert the following text "or that the instructor is team teaching with a certified public accountant licensed in Texas" and delete the following text "within the last three years or"; in subsection (b)(1) delete the following text "or by June 30, 2005, whichever is later,"; in subsection (b)(5) delete the text "Public Accountancy"; add new subsection (d) with the following text "An instructor must submit a current resume with the contract."; and reletter subsection (d) as subsection (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for ethics course instructors.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 24, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Contracted Ethics Instructors [after ~~January 1, 2005~~].

(a) The [~~Effective January 1, 2005, the~~] board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content [~~after January 1, 2005~~]) who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and has completed the board's ethics training program [~~within the last three years or~~] as required by the board;

(2) - (3) (No change.)

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon proof that he has:

(1) at the time of application [~~or by June 30, 2005, whichever is later,~~] obtained education in ethics substantially equivalent to a minimum of 6 hours of credit from an accredited University, College or Community College, of which at least three hours must be in organizational ethics;

(2) - (4) (No change.)

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the [~~Public Accountancy~~] Act.

(c) (No change.)

(d) An instructor must submit a current resume with the contract.

(e) [~~(d)~~] Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Public Accountancy Act an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800803

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 305-7848

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 13. MISCELLANEOUS INSURERS
SUBCHAPTER D. RISK RETENTION GROUPS AND PURCHASING GROUPS

28 TAC §13.313

The Texas Department of Insurance proposes an amendment to §13.313, concerning the annual registration filing date for purchasing groups. The proposed amendment is necessary to change the current annual registration filing dates and to establish a single annual registration filing date requirement for purchasing groups of on or before July 1 of each year. The proposed amendment to §13.313(c) requires each purchasing group to file current information on or before July 1 of each year instead of the existing requirement that such current information be filed on or before each purchasing group's policy anniversary date each year. This change to a single annual registration filing date is necessary because the current registration filing requirement, which allows for multiple registration filing dates, results in an inefficient use of Department resources, and this problem can be eliminated by requiring the same annual registration filing date for all purchasing groups. In addition, purchasing group industry representatives have requested that the Department consider adopting a single annual registration filing date for all purchasing groups because the majority of states have already done so. A single annual registration filing date will help standardize the requirements in Texas with those in other states. The proposed amendment also requires each purchasing group to file its current information on Form PG1R instead of Form PG1. This change is necessary because Form PG1R specifically requires only information directly relevant to the renewal of a purchasing group's registration, whereas Form PG1 requires all information relevant to the initial registration of a purchasing group. The proposed amendments also amend §13.313(a) and (b) to replace the reference to the State Board of Insurance with a reference to the Commissioner of Insurance. This change is necessary because the State Board of Insurance was abolished effective September 1, 1994, and the Commissioner of Insurance was granted the authority previously granted to the State Board of Insurance, pursuant to Acts 1993, 73rd Legislature, ch. 685, §1.23. Amendments to §13.313(a) and (b) are also proposed to update statutory references in accordance with the nonsubstantive revised Insurance Code. The proposed amendments also delete §13.313(b)(6) which requires the use of Form PG2, a form no longer used because the collection of premium taxes from purchasing groups is a function of the Texas Comptroller of Public Accounts, and not the Department.

FISCAL NOTE. Kathy Wilcox, Registrations Officer, Company Licensing and Registration Division, has determined that for each year of the first five years the proposed amendments are

in effect, there will be no fiscal implications for state or local government as a result of the amendments, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Ms. Wilcox also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be more efficient review of registration statements filed by purchasing groups resulting in more efficient and uniform regulation of purchasing groups subject to the provisions of the Insurance Code Chapter 2201 (formerly Article 21.54), relating to the regulation of purchasing groups and risk retention groups. The proposed amendments will also result in more consistent reporting by domestic and foreign purchasing groups registered to conduct business in Texas. There is no financial cost to persons required to comply as a result of the adoption, enforcement or administration of the proposed amendments. This is because the proposal does not add any new requirements or costs with which businesses, regardless of size, must comply that are not already required. Under the proposal, purchasing groups seeking to maintain their registration to do business in Texas will continue to file annually on a promulgated form.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments to §13.313(c), concerning the establishment of a single annual registration filing date for purchasing groups and the use of Form PG1R will not have an adverse economic effect on small businesses or micro businesses that are required to comply with the proposal. This is because the proposal does not add any new requirements or costs with which businesses, regardless of size, must comply that are not already required. Under the proposal, small or micro business purchasing groups seeking to maintain their registration to do business in Texas will continue to file annually on a promulgated form. In accordance with the Government Code §2006.002(c), the Department has, therefore, determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 24, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 110-1A, Austin, Texas 78703. An additional copy of the comments must be submitted simultaneously to Kathy Wilcox, Registrations Officer, Company Licensing and Registration Division, Texas Department of Insurance, Mail Code 305-2C, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapter 2201 and §36.001. Insurance Code §2201.008 authorizes the Commissioner to adopt rules that are necessary to carry out Chapter 2201, relating to the regulation of risk retention groups and purchasing groups. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by the proposal: Insurance Code Chapter 2201.

§13.313. Forms Required for Risk Retention Groups and Purchasing Groups.

(a) Requirement for use of specific forms. Risk retention group or purchasing group filings and registrations under the Insurance Code, Chapter 2201, [~~Article 21.54,~~] must be effected by using forms promulgated by the commissioner [~~State Board~~] of insurance [~~Insurance~~].

(b) Adoption by reference of forms. The commissioner [~~State Board~~] of insurance [~~Insurance~~] adopts by reference standard forms as specified in paragraphs (1) - (6) of this subsection and subsection (c) of this section for use by risk retention groups and purchasing groups which are subject to the provisions of this subchapter and the Insurance Code, Chapter 2201 [~~Article 21.54~~]. The forms are published by the Texas Department [~~State Board~~] of Insurance, and copies of the forms are available from the Company Licensing and Registration Division, Texas Department of Insurance, Mail Code 305-2C, P.O. Box 149104, Austin, Texas 78714-9104 [~~Risk Retention Unit, Mail Code 014-5, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701~~]. The following forms must be utilized, as applicable, under the provisions of this subchapter and the Insurance Code, Chapter 2201 [~~Article 21.54~~].

(1) Risk retention groups seeking to be chartered in this state pursuant to the Insurance Code Chapters 822, 861, and 883, [~~Chapters 2, 8, and 15,~~] must utilize Form RRG-A-120.

(2) Risk retention groups seeking to be chartered in this state pursuant to the Insurance Code, Chapter 942 [~~Chapter 19~~] must utilize Form RRG-A-121.

(3) Foreign or alien risk retention groups seeking to do business as a risk retention group in this state must utilize Form RRG-A-122.

(4) All risk retention groups and purchasing groups seeking to do business in this state must utilize Form RRG/PG PC1, for appointing the commissioner as agent for service of process.

(5) Purchasing groups filing a notice of intent and registering to do business in this state under the Insurance Code, §§2201.255 and 2201.256, [~~Article 21.54, §7(a),~~] must utilize Form PG1.

[~~(6) Purchasing groups filing taxes not filed by agent or insurer must utilize Form PG2.~~]

(6) [~~(7)~~] Agents filing annual reports as required by the Insurance Code, §2201.007, [~~Article 21.54, §10(e),~~] must use Form PG3.

(c) Annual filing by purchasing groups. On or before July 1 [~~its policy anniversary date~~] each year, beginning in 2008, every purchasing group doing business in this state shall provide the commissioner of insurance with current information on Form PG1R [~~PG1, referred to in subsection (b) of this section~~]; however, there shall be no filing fee for annual filings of Form PG1R [~~PG1~~] after payment of the initial filing fee described in §13.312 of this title (relating to Regulatory Fees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2008.

TRD-200800702
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER E. HEALTH FACILITY FEES

28 TAC §134.401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes the repeal of existing §134.401, concerning Acute Care Inpatient Hospital Fee Guideline.

Section 134.401 was adopted in 1997. It provided for per diem reimbursement and a "stop-loss" provision. The stop-loss provision was intended to compensate for unusually costly services. Instead of per diem reimbursement, the stop-loss provision of §134.401(c)(6) provided for a reimbursement of 75% of total audited charges if those charges exceeded $40,000. At the time the rule was adopted, only 4% of hospital bills exceeded $40,000. By 2006, however, 32% of hospital bills exceeded $40,000.

In 2001, the Legislature passed House Bill 2600, which amended Labor Code §413.011 by directing the Texas Workers' Compensation Commission to adopt a reimbursement structure modeled along the lines of the Medicare system.

In accordance with that directive, the Division recently adopted §134.403, concerning Hospital Fee Guideline--Outpatient and §134.404, concerning Hospital Facility Fee Guideline--Inpatient, which will supersede the provisions of §134.401 on and after March 1, 2008. Section 134.403 and §134.404 implemented Labor Code §413.011 by adopting a standardized reimbursement structure using in part the most current methodologies, models, values and weights used by the Centers for Medicare and Medicaid Services (CMS).

Section 134.401 no longer meets the needs of the workers compensation system. Since §134.401 will no longer be needed after March 1, 2008, the Division proposes the repeal of §134.401.

Matt Zurek, Director of Health Care Policy, has determined that, for the first five years after the repeal of the section, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or the local economy as result of the proposed repeal.

Mr. Zurek has also determined that, for each year of the first five years after the repeal of the section, the public benefit anticipated as a result of the repeal will be the elimination of unnecessary regulations. There will be no economic cost to any individuals, or insurers or other Division regulated entities, regardless of size, as a result of the proposed repeal.

In accordance with the Government Code §2006.002(c), a Division analysis has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of an unnecessary rule. Therefore, in accordance with the Government Code §2006.002(c), the Division is not required to prepare a regulatory flexibility analysis.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 24, 2008. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/rules/proposedrules/toc.html* or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other codes, statutes or articles are affected by this proposal.

§134.401. Acute Care Inpatient Hospital Fee Guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800798

Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 804-4715

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER D. EDUCATION

31 TAC §51.80

The Texas Parks and Wildlife Department proposes an amendment to §51.80, concerning Hunter Education Course and Instructors. The proposed amendment would reduce the minimum age requirement for hunter-education certification. The current minimum age for hunter-education certification is 12, which has been in effect since 1988. Staff recommends lowering the minimum age to 9 years of age to be consistent with the minimum age standards of the department's youth hunting program and similar laws in other states.

Mr. Steve Hall, Education Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the rule.

Mr. Hall also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be that larger numbers of Texas youth will be to participate in hunting activities in Texas and elsewhere.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Steve Hall, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: steve.hall@tpwd.state.tx.us).

The rule is proposed under the authority of Parks and Wildlife Code, §62.014, which authorizes the department to adopt rules necessary to implement the hunter education program.

The proposed rule affects Parks and Wildlife Code, Chapter 62.

§51.80. Hunter Education Course and Instructors.

(a) (No change.)

(b) Hunter Education Requirements.

(1) - (3) (No change.)

(4) A person must be at least nine [~~12~~] years of age to be certified.

(5) - (8) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800782
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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SUBCHAPTER O. ADVISORY COMMITTEES

The Texas Parks and Wildlife Department (the department) proposes the repeal of §51.651 and amendments to §51.607 and §51.608, concerning advisory committees. The proposal would repeal the advisory committee rules regarding the Operation Game Thief Committee and restructure the agency's two game bird advisory committees.

The repeal of §51.651 and the proposed amendments to §51.607 and §51.608 are necessary to more accurately reflect the status of the Operation Game Thief Committee and to address the restructuring of the agency's game bird advisory committees.

The Texas Parks and Wildlife Code authorizes the Chairman of the Texas Parks and Wildlife Commission (the commission) to appoint advisory committees and to "adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section." Tex. Parks & Wild. Code, §11.0162. An advisory committee is a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Tex. Gov't Code, §2110.001.

For a number of years, the department has sought advice from interested persons and groups about the functions of the departments. Such input is important as the commission and the department carry out the agency's mission. The formation of advisory committees is an efficient and effective method of obtaining necessary and useful input. The department does not reimburse advisory committee members for their expenses or otherwise compensate advisory committee members.

Under Government Code, Chapter 2110, unless otherwise provided by specific statute, for each official advisory committee, a state agency must adopt rules that (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which

the committee will automatically be abolished. Tex. Gov't Code, §§2110.005, 2110.008. Government Code. Chapter 2110 contains other requirements for advisory committees, such as annual evaluation, a limit of 24 members, balanced membership representation, selection of presiding officer by members, and four-year duration unless otherwise provided by rule. Tex. Gov't Code §§2110.002, 2110.003, 2110.006, 2110.008. Effective in September 2005, the Commission adopted rules regarding each of the agency's advisory committees. Those rules included the Operation Game Thief Advisory Committee, the Game Bird Advisory Board and the Texas Quail Council.

The proposed repeal of §51.651, concerning Operation Game Thief Advisory Committee, is necessary to more accurately reflect the role of the Operation Game Thief Committee. The Operation Game Thief Committee is established by statute under Parks and Wildlife Code, §12.202, to make reward payments and death benefit payments from the Operation Game Thief fund. As a result, the Operation Game Thief Committee is not clearly an advisory committee under Government Code, Chapter 2110.In addition, there are currently other more specific rules regarding the Operation Game Thief program under 31 TAC §§55.111 - 55.116.

The proposed amendments to §65.607, concerning the Game Bird Advisory Board, and §65.608, concerning the Texas Quail Council, would reconfigure those two sections. The proposed amendment to §65.607 would change the name of the Game Bird Advisory Board to the Migratory Game Bird Advisory Board. The proposed amendments would also limit the scope of the committee's role to those issues affecting migratory game birds.

The proposed amendment to §65.608 would change the name of the Texas Quail Council to the Upland Game Bird Advisory Board. The proposed amendments would also expand the scope of the committee's role to include issues affecting all upland game birds. Although the scope of this committee's role will be expanded, issues involving quail will continue to be an important component of this committee's role.

The changes to the two game bird advisory committees will also more closely align the advisory committee structure with current law regarding hunting stamps. In 2005 the 79th Texas Legislature repealed the turkey stamp, the white-winged dove stamp, and the duck stamp and replaced them with the upland game bird stamp and the migratory game bird stamp. By statute, revenues from the sale of the respective stamps are specifically dedicated to habitat acquisition, research, and management of upland game birds and migratory game birds, respectively. Since the department's research and management activities now reflect this dichotomy, the department has determined that is appropriate and necessary for the charges to the department's advisory boards to be similarly delineated. Therefore, the proposed amendments would replace the Game Bird Advisory Board with the Migratory Game Bird Advisory Board and the Texas Quail Council with the Upland Game Bird Advisory Board.

Ann Bright, General Counsel, has determined that for each of the first five years the repeal and amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Bright has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be to ensure proper management and effective use of department advisory committees. The department does not reimburse advisory committee members for their expenses or otherwise compensate advisory committee members.

There will be no adverse economic effect on persons required to comply with the amendment as proposed.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

DIVISION 2. WILDLIFE

31 TAC §51.607, §51.608

The amendments are proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005, 2110.008.

The proposed amendments affect Parks and Wildlife Code, §11.0162.

§51.607. Migratory Game Bird Advisory Board (MGBAB) [(GBAB)].

(a) The MGBAB [~~GBAB~~] is created to advise the department regarding the following:

(1) the management, research and habitat acquisition needs of [~~game birds and~~] migratory game birds.

(2) development and implementation of [~~game bird and~~] migratory game bird regulations, research, and management.

(3) education and communications with various constituent groups and individuals interested in [~~game birds and~~] migratory game birds.

(b) The MGBAB [~~GBAB~~] consists of members selected from members of the general public with an interest in [~~game bird and~~] migratory game bird management.

(c) The MGBAB [~~GBAB~~] shall comply with the requirements of §51.601 of this title (relating to General Requirements).

§51.608. Upland Game Bird Advisory Board (UGBAB) [~~Texas Quail Council (TQC)~~].

(a) The UGBAB [~~TQC~~] is created to advise the department on matters pertaining to [~~the implementation of the Texas Quail Conservation Initiative, including~~] the following:

(1) regulation, management, research, and funding needs regarding upland game bird [~~the four~~] species [~~of quail~~] that occur in Texas; [~~and~~]

(2) management, research and habitat acquisition needs of upland game birds; and [~~and migratory game birds.~~]

(3) education and communications with various constituent groups and individuals interested in upland game bird [~~the quail~~] species of Texas.

(b) The composition of the UGBAB [~~Texas Quail Council~~] shall represent:

(1) the ecological range of upland game bird [~~quail~~] species in Texas;

(2) landowners;

(3) conservation organizations;

(4) representatives of appropriate state and federal agencies; and

(5) upland game bird [~~quail~~] hunters.

(c) The UGBAB [~~TQC~~] shall comply with the requirements of §51.601 of this title (relating to General Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800783
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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DIVISION 6. LAW ENFORCEMENT

31 TAC §51.651

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005 and 2110.008. The proposed repeal affects Parks and Wildlife Code, §11.0162.

§51.651. Operation Game Thief Committee (OGTC).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800784
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.10

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.10, concerning Public Hunting and Fishing Permits and Fees. The proposed amendment would allow the purchase of Big Time Texas Hunt (BTTH) entries via the department's web site for $9 per entry. Parks and Wildlife Code, §11.0271, authorizes the department to conduct public drawings for public hunting privileges and to charge a participation fee for the drawings. The BTTH program offers selected special hunting opportunities to the public by random drawing from a pool of applicants who have purchased an entry or entries. There is no limit on the number of entries a person may purchase. The proceeds from the sale of the entries are used to provide the hunting opportunities and to supplement the department's public hunting programs.

Under the current rule, all entries are $10. The department believes that the offer of a reduced price for entries purchased via the Internet will encourage customers to make such purchases via the Internet and result in increased participation in BTTH drawings. Increased sales of BTTH entries will increase revenues to support the department's public hunting program.

In addition, a reduced price for Internet entries will also support the department's effort to more fully use the Internet to provide information to potential BTTH participants about the benefits of the BTTH program. Historically, TPWD has been very successful in obtaining BTTH participation by providing BTTH information by direct mail to certain hunting and fishing license holders and previous BTTH purchasers. However, the costs associated with such direct mail efforts continue to rise. The department believes that it can reduce these costs by expanding its email communications to those online customers who prefer to be reached via this method. Such methods of communication will also enhance the convenience with which a person may purchase one or more BTTH entries. The department believes that the reduced price for Internet purchases of BTTH entries will assist the department in expanding efforts to encourage participation in BTTH and increase BTTH purchases without an increase in cost to the department.

Darcy Bontempo, Director of Marketing, has determined that for each of the first five years that the rule as proposed is in effect, although the department anticipates an increase in BTTH sales, the overall fiscal impact to the department will depend on customer response to the on-line discount offer. As a result, the fiscal impact to the department could be positive or negative, or there could be no fiscal impact as a result of enforcing or administering the rule.

In Fiscal Year (FY) 2007, the department sold 79,815 BTTH entries in 17,668 transactions, resulting in gross revenues of $798,815 to the department. The overwhelming majority of the entries (16,714) were purchased by mail, by telephone, in person or through TPWD's Internet web site directly from the department. The other 954 entries were purchased from license deputies (third-party representatives of the department authorized to sell licenses, stamps, and permits). Of the 16,714 purchased directly from the department, 7,181 entries were purchased through the department's Internet site. When point-of-sale, credit card transaction fees, license deputy commissions

and related fees are deducted, the net revenue to the department in FY 2007 from the sales of BTTH entries was $780,806, rounded to the nearest dollar. This figure does not include any Internet convenience fees charged by the department for on-line transactions.

Using FY 2007 sales data, if Internet sales of BTTH entries remain constant at 7,181 entries, the department would realize a reduction of gross revenue of $7,181. However, if sales of Internet BTTH entries increase by approximately 11% and other forms of BTTH entries remain constant, the department will realize no overall fiscal impact, again excluding any convenience fee. However, if, as anticipated, the participation rate increases by more than approximately 11%, the department will realize a positive fiscal impact. In addition, if Internet outreach proves to be successful, the department may be able to reduce direct mail costs which are projected to be approximately $0.50 per direct mail piece in 2008.

There will be no fiscal implications for other units of state or local government as a result of the rule.

Ms. Bontempo also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be enhancement of public hunting opportunity created by the increased revenue from the BTTH program, as well as the availability of a reduced-price option and increased convenience for persons wishing to participate in the program.

There will be no additional economic costs for persons required to comply with the rules as proposed. Participation in the BTTH program is voluntary. The proposed rule would allow for a discount of $1 per BTTH entry per transaction for BTTH entries purchased online.

The rules as proposed may result in direct adverse economic impacts on small businesses or micro-businesses. The department has determined that there are 133 entities that may qualify as small or micro-businesses and may be affected by the rule as proposed. The businesses sell licenses and permits on behalf of the department and receive a commission of 5% of the value of each transaction. Department data show that in 2007, small and micro-businesses conducted 469 transactions involving the sale of a BTTH entry, with an average commission of $1.75. The largest commission paid was $10. Therefore, if the proposed rule resulted in all BTTH entries being purchased online, the maximum direct adverse impact to any small business or microbusiness, based on historical data, would be an average loss of $1.75 and a maximum of $10. Otherwise, the proposed rule would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees.

The purpose of the proposed amendment is to offer a convenient method for customers to purchase BTTH entries and at the same time create opportunities to promote department programs and partners.

The department has considered alternatives to reduce the direct adverse economic impact of the proposed rule on small businesses and micro-businesses. The agency considered not implementing a reduced price for BTTH entries purchased online. This alternative was rejected because it would not allow the department to achieve the one of the objectives of the rule, which is to create opportunities to promote department programs and partners online. The department also considered simply setting the price of a BTTH entry at $9. This alternative was rejected because it would diminish current funding levels for the public hunting program.

In view of the information currently available to the department, no reasonable alternative to the proposed rule could be identified that achieve the objective of the proposed rule and be as effective and less burdensome to small businesses or micro-businesses.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Darcy Bontempo, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4574 (e-mail: darcy.bontempo@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0271, which requires the commission to set any fees for participation in a drawing to select applicants for public hunting privileges.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§53.10. Public Hunting and Fishing Permits and Fees.

(a) - (b) (No change.)

(c) Application fee. The following fee amounts apply only to persons 17 years of age or older. The non-refundable application fee for individuals applying for computer-selected participant hunting opportunities is:

(1) $3 per applicant for participation in drawings for supervised hunts;

(2) $10 per applicant for participation in drawings for guided hunts and management deer hunts on private lands leased by the department; [~~and~~]

(3) $10 per entry for participation in drawings for Big Time Texas Hunts, if not purchased online via the department's website; and[~~.~~]

(4) $9 per entry for participation in drawings for Big Time Texas Hunts, if purchased online via the department's website.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.112, §57.113

The Texas Parks and Wildlife Department (the department) proposes amendments to §57.112 and §57.113, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants.

The proposed amendment to §57.112, concerning General Rules, would prohibit the removal of live grass carp from public waters where grass carp have been placed under a permit issued by the department. The department issues permits authorizing the purchase and release of grass carp to control aquatic vegetation in public waters. The removal of grass carp from waters where they have been released frustrates the biological goal of controlling aquatic vegetation and reduces the cost effectiveness of that control effort. The proposed amendment is necessary to make grass carp introductions as efficacious as possible.

The proposed amendment would prohibit the release into public waters, importation, sale, purchase, transport, propagation, and possession of black carp (Mylopharyngodon piceus), silver carp (Hypopthalmichthys molitrix), and all species of crayfish within the family Parastacidae.

The U.S. Fish and Wildlife Service has added the black carp and the silver carp to the federal list of injurious fish, which prohibits live fish, gametes, viable eggs, and hybrids of listed species from being imported into or transported between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico or any territory or possession of the United States. The silver carp was added to the list on July 10, 2007 and the black carp was added to the list on October 18, 2007. Although the federal listing does not affect any state's authority to permit possession of black carp or silver carp, by prohibiting importation and interstate transport it effectively makes commercial production of those species moot. The department is aware of no person in the state cultivating or selling black or silver carp under an exotic species permit. The proposed amendment would make Texas regulations consistent with federal regulations.

Under current rules the possession, importation, sale, purchase, transport, propagation, and release into public waters of all species of southern hemisphere crayfish with the exception of the family Parastacidae are prohibited. Crayfish in the family Parastacidae may be possessed, propagated, transported, and sold under an exotic species permit, but live Parastacidae may be possessed by non-permitted persons only at a restaurant or other food service establishment for purposes of on-premises consumption as food or while being transported to an out-of-state destination.

The department has conducted a risk analysis of escapement, establishment, and environmental impact of Australian red claw crayfish (Cherax quadricarinatus). The risk analysis concluded that there is a high potential of escapement from both open and closed systems and a high probability of survival and population establishment in natural systems in Texas. Closed systems are tank or pond systems that do not allow free ingress or egress. Open systems are ponds that allow organisms to enter or leave as they wish. The department finds that the potential detrimental effects on native Texas crayfishes and other aquatic organisms provide ample justification for the prohibition of the possession of live red claw crayfish in the state.

The impact of a specific exotic species on a given native ecosystem is difficult to predict, but in general terms, the threat potential can be characterized by 1) evidence that the species is invasive elsewhere; 2) potential suitable range; 3) reproductive potential; 4) habitat quality; 5) the presence/absence of similar species; 6) the prey/predator relationship within the prospective habitat; and 7) food abundance. In addition, other factors such as dispersal dynamics (organisms and the way they move and distribute themselves between habitats) can affect the efficiency with which an invasive exotic species can become established. Once established, invasive exotic species are extremely difficult if not impossible to eliminate.

The Australian red claw crayfish (Cherax quadricarinatus) is native to remote areas of tropical northern Australia. Escapement of other nonindigenous crayfishes into natural systems in the U.S. has resulted in the elimination of native crayfishes from lakes and streams, the loss of habitats and forage important for native fish production and recruitment, and reduced abundance of native amphibians (Lodge et al. 2000). These negative impacts, coupled with the observation that most North American crayfishes occur within small ranges throughout the southeastern United States, suggest a potential cause for concern regarding the vulnerability of native aquatic communities to nonindigenous crayfishes in Texas.

Escapements from aquaculture facilities, as well as both intentional and unintentional releases by aquarium and pond enthusiasts, have been responsible for the establishment of many nonindigenous fishes in the United States. Aquaculture has been identified as the fourth most important vector in crayfish introductions in North America (Lodge et al. 2000), and an estimated 65% of escape events have resulted in the establishment of exotic populations (Beveridge, no date). Escapement of the red claw crayfish from aquaculture environments has been documented in Africa, Puerto Rico, and Venezuela (Williams et al. 2001; de Moor 2002). Adults have exhibited the ability to climb air supply lines, whereas juveniles climb the sides of tanks or become drawn into filter and drainage systems and subsequently released (Masser and Rouse 1997). Red claw crayfish also exhibit the ability to escape natural or man-made pond environments over land (J. Furse, Griffith University). These results indicate a high escapement potential of red claw crayfish in both open and closed systems.

Red claw crayfish are habitat generalists, exhibiting broad dietary requirements and the ability to survive a broad range of environmental conditions (Masser and Rouse 1997; Kats and Ferrer 2003). Optimal growth and survival occurs at water temperatures above 21°C (70°F); however, individuals can survive at water temperatures as low as 7 to 10°C (46 to 50°F; Masser and Rouse 1997), with reproduction occurring at temperatures greater than 15°C (59°F; J. Furse, Griffith). Red claw crayfish can also persist at relatively low dissolved oxygen concentrations (< 1 ppm; Masser and Rouse 1997), and high levels of salinity (e.g., up to 1.75%). Mean annual water temperatures in many regions of Texas are within the thermal tolerances of the red claw crayfish, suggesting that these regions, as well as thermally influenced areas (e.g., springs, municipal warmwater discharges, etc.) may facilitate the survival of red claw crayfish in natural environments. In addition, red claw crayfish have the

ability to burrow into substrates (Masser and Rouse 1997) which may provide thermal insulation and allow individuals to persist at sublethal temperatures.

The reproductive characteristics of the red claw crayfish suggest the potential for rapid population growth in a suitable environment. Individuals reach reproductive maturity at 6 to 12 months of age and have the ability to produce multiple broods each year with high reproduction rates (i.e., up to 1,000 eggs per female per spawn; Masser and Rouse 1997). In contrast, most native North American crayfishes spawn once per year during fall and females bear eggs during spring (Helfrich and DiStefano 2003). The growth of juvenile red claw crayfish is rapid and aggressive behavior and cannibalism is known to occur at this lifestage (Masser and Rouse 1997). It is unknown whether these behaviors exhibited towards other red claw crayfish would be extended to other species under competition in a natural environment.

Little information exists regarding competition between red claw crayfish and native North American species. Masser and Rouse (1997) reported that red claw crayfish did not negatively affect native red swamp crayfish during interaction experiments in an Alabama culture environment. However, red claw crayfish are known to dominate local Australian crayfish and prawn species (Cook et al., no date) and out-compete native shrimp species in Puerto Rico (Williams et al. 2001). Studies of the impacts of other exotic crayfishes on native species indicate highly detrimental effects, including reductions in distribution or extirpation (Reigel 1959; Bouchard 1977; Lodge et al. 1986; Olsen et al. 1991; Jezerinac et al. 1995; Light et al. 1995; Taylor and Redmer 1996; Lodge et al 2000b). Competitive advantages of the exotic species were found to be related to a number of interacting mechanisms, including food consumption rates (Olsen et al. 1991; Willman et al. 1994), individual growth rates and potential (Hill et al. 1993), competition for shelter and food (Hill and Lodge 1994), differential susceptibility to fish predation (DiDonato and Lodge 1993; Garvey et al. 1994), and genetically confirmed hybridization (Perry et al. unpublished data; Lodge et al. 2000b). The relatively large body size, rapid growth rate, and reproductive potential of the red claw crayfish suggest that these characteristics may provide similar competitive advantages over native Texas species.

Approximately 350 species (75% of the world's total) of crayfish inhabit the United States. Many of these are among the most threatened of all terrestrial and aquatic species (Lodge et al. 2000a; Lodge et al. 2000b). In addition, the majority of these crayfishes occur within small geographic ranges in the Southeastern U.S., rendering them highly susceptible to environmental change (Lodge et al. 2000b). A total of 35 species of crayfish are native to Texas, 13 of which are endemic and distributed over a relatively small geographic scales (e.g., drainage basins, counties, etc.). In 1996, the American Fisheries Society listed four Texas species as of special concern, one as threatened, and an additional six as endangered (Table 1). The status of these species, coupled with the limited geographic distribution of many Texas crayfishes, suggests that conserving these populations and their respective environments are future challenges faced by the department. In addition, other state and federally listed aquatic organisms, such as the San Marcos salamander (*Eurycea nana*), the Comal Springs riffle beetle (*Heterelmis comalensis*), the Comal Springs Dryopid beetle (*Stygoparnus comalensis*), and the fountain darter (*Etheostoma fonticola*), could be negatively affected due to predation, alterations in habitat, food web dynamics, and competition from invasive exotic species. Although little is known about the direct impacts of the red claw crayfish on native aquatic communities in the U.S., information from other countries, case histories of other invasive crayfishes in the U.S., and the population status of many aquatic species in Texas suggest that detrimental effects on natural systems in the state are probable.

Mr. Joedy Gray, Exotic Species Program Coordinator, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Gray also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of the state's aquatic ecosystems from the adverse effects of intentional and accidental introductions of exotic aquatic species exotic species.

The rules as proposed will not result in adverse economic impacts to persons required to comply with the rule. The only class of person that might be adversely affected by the proposed rule would be those persons culturing and selling black carp, silver carp, or organisms within the family Parastacidae. Although the rules as proposed would prohibit the possession of black carp, silver carp, or live crayfish of the family Parastacidae, the rules currently in effect prohibit the possession of those species without a valid exotic species permit issued by the department. Since to the department's knowledge there are no persons in Texas who are in lawful possession of these species, there are no persons adversely affected by compliance with the proposed rule, although there may be persons who possess and sell these species illegally.

The rules as proposed will not result in direct adverse economic impacts to small businesses or micro-businesses, as there are no small businesses or micro-businesses in the state engaged in any lawful commercial activity involving black carp, silver carp, or Australian red claw crayfish.

Although Government Code § 2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the proposed rule, the department nonetheless provides a regulatory analysis, as follows.

The benefit anticipated by the department as a result of implementing the proposed rules is the protection of native aquatic ecosystems from the potential adverse effects of introduced exotic species. The adverse effects of intentional and accidental introductions of exotic aquatic species into natural aquatic systems have been widely studied and documented around the world. Once established, invasive exotic species are extremely difficult if not impossible to eliminate. The department's risk analysis concludes that the Australian red claw crayfish presents a credible threat to native species and ecosystems; therefore, the proposed amendment is justifiable.

Other than the public benefits described elsewhere in this preamble, there will be no other benefits or costs to other state agencies, local governments, the public, or the regulated community as a result of adoption and implementation of the proposed amendments. The department finds that there no person in the state is presently in lawful possession of live black carp, silver carp, or Parastacidae.

The department finds that there is no reasonable alternative that would be as or more effective in achieving the objective of the proposed amendments.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Joedy Gray, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8037 (e-mail: joedy.gray@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the commission to regulate the importation, possession, sale, and placing into the water of this state harmful or potentially harmful exotic fish, shellfish and aquatic plants, and under Agriculture Code, §134.020, which authorizes the commission to regulate the importation, propagation, and sale of harmful or potentially harmful exotic species by an aquaculturist.

The proposed amendments affect Parks and Wildlife Code, Chapter 66 and Agriculture Code, Chapter 134.

§57.112. General Rules.

(a) - (b) (No change.)

(c) Except as specifically authorized in writing by the department, it is an offense for anyone to remove a live grass carp from public waters where grass carp have been introduced under a permit issued by the department.

(d) [~~(c)~~] Violation of any provision of a permit issued under these rules is a violation of these rules.

§57.113. Exceptions.

(a) - (c) (No change.)

(d) A person who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell water spinach, triploid grass carp, [~~silver carp, triploid black carp, commonly known as snail carp,~~] bighead carp, blue tilapia (Oreochromis aureusa), Mozambique tilapia (O. mossambica), Nile tilapia (O. nilotocusa), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) - (h) (No change.)

(i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of triploid grass carp, [~~silver carp, triploid black carp,~~] bighead carp, blue tilapia, Mozambique tilapia, Nile tilapia or hybrids of those species held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the fish have been gutted or beheaded; or

(2) (No change.)

(j) - (m) (No change.)

[~~(n) An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport, and sell Parastacidae. Live Parastacidae may be possessed without a permit only:~~]

[~~(1) at a restaurant or other food service establishment for purposes of on-premises consumption as food; or~~]

[~~(2) while being transported to an out-of-state destination.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.9 - 65.11, 65.42, 65.60, 65.62, and 65.72, concerning the Statewide Hunting and Fishing Proclamation.

The proposed amendment to §65.9, concerning Open Seasons: General Rules, would alter subsection (a) to make it consistent with statutory changes made by the legislature. The current rule prohibits the hunting of game animals or game birds on public roadways or the right of way of public roadways. Section 44 of House Bill 12, enacted by the 80th Legislature, amended Parks and Wildlife Code, §62.001, prohibits the hunting of any bird or animal on a public roadway or right of way, except as provided. The proposed amendment is necessary to ensure that the agency's regulations are consistent with statutory law.

The proposed amendment to §65.10, concerning Possession of Wildlife Resources, would allow certain department-issued tags to function as proof-of-sex documentation for harvested deer. Current rules require that proof of sex remain with deer, turkey, or antelope until reaching either the possessor's permanent residence or a cold storage/processing facility. For deer, proof of sex consists of the unskinned head, a receipt from a taxidermist, or a signed statement from the owner of the land where the deer was killed. The proposed amendment would add new subsection (e) to allow specific department-issued tags (Managed Lands Deer Permit, Landowner Assisted Management Permit, antlerless mule deer permit, special permits on wildlife management areas and state parks, and Antlerless and Spike-buck Control Permit) to function as proof-of-sex documentation. The amendment is necessary to reduce duplication of effort on the part of hunters. The proposed amendment also corrects an inaccurate reference in subsection (b)(6).

The proposed amendment to §65.11, concerning Lawful Means, would eliminate the minimum draw weight requirement for archery equipment. Under current rule, the minimum draw weight for compound bows, recurved bows, and longbows is 40 pounds. If the minimum draw weight is eliminated, staff believes that bowhunting would become more accessible to

younger hunters and others who might have difficulty drawing a 40-pound bow.

The proposed amendment to §65.42, concerning Deer, would implement a nine-day, buck-only mule deer season in Andrews (east of U.S. Highway 385), Martin, and Gaines counties. Under current rule, there is no open season for mule deer in Andrews (east of U.S. Highway 385), Martin, or Gaines counties. Implementing a nine-day, buck-only would offer increased hunter opportunity without adversely impacting mule deer reproduction or distribution. The literature suggests that the implementation of a buck-only season will not have any measurable impact on herd productivity or expansion; however, a measurable change in the age structure of bucks is anticipated as a result of harvest pressure on a previously unhunted population.

The proposed amendment to §65.42 also would implement a 16-day, buck-only general season and a 30-day buck-only archery season for mule deer in Sherman and Hansford counties. Under current rule, there is no open season for mule deer in Sherman or Hansford counties. Each county has low-density populations of mule deer in pockets of suitable habitat. The literature suggests that the implementation of a buck-only season will not have any measurable impact on herd productivity or expansion; however, a measurable change in the age structure of bucks is anticipated as a result of harvest pressure on a previously unhunted population. The nature of mule deer populations in the Panhandle allows the department to provide those counties a 30-day archery-only season in addition to the 16-day general season. The proposed amendment would, therefore, implement an archery season in Hansford and Sherman counties during which harvest is restricted to buck deer. The hunter success rate for archers is statistically insignificant and the biological impacts of that harvest are negligible when harvest is restricted to buck deer. Implementation of the proposal is expected to result in increased hunter opportunity with no measurable effect on reproduction or distribution of mule deer populations.

The proposed amendment to §65.60, concerning Pheasant, would start the pheasant season in the Panhandle one week later than the current opening date and extend the total length of the season by seven days. Under current rule, pheasant season in the Panhandle opens on the first Saturday in December and runs for 30 consecutive days. In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, the deer season runs from the Saturday before Thanksgiving for 16 consecutive days, meaning that in those counties the deer and pheasant seasons overlap. The proposed amendment would start the pheasant season the second Saturday in December and run it for 37 consecutive days. The proposed amendment is necessary to allow for independent enforcement of open seasons and to create additional opportunity. The proposed amendment has no biological implications and, therefore, will not result in depletion or waste.

The proposed amendment to §65.62, concerning Quail: Open Season, Bag, and Possession Limits, would extend the quail season to run concurrently with the period of validity for Level 2 and 3 Managed Lands Deer Permits (MLDP). Under current rule, the quail season runs from Saturday closest to October 28 through the last Sunday in February, while the period of validity for Level 2 and 3 MLDPs extends to the last day in February. In one out of every seven years, the last Sunday in February will also be the last day in February; in the remaining years, the last Sunday in February will fall before the last day in February. The proposed amendment would extend the quail season through the last day in February, which in 2009 will be a Saturday. The proposed amendment is necessary to eliminate hunter confusion, create additional opportunity, and simplify regulations. The proposed amendment has no biological implications and, therefore, will not result in depletion or waste.

The proposed amendment to §65.72, concerning Fish, consists of several components.

The proposed amendment would restrict anglers to a maximum of two lines/poles on community fishing lakes (CFLs) that are not within state parks. CFLs are public impoundments of 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park. Under current rule, means and methods on CFLs are restricted to pole-and-line angling only. Because of their proximity to population centers and easy access, CFLs are quite popular. CFLs are important because they are good places to introduce people to the angling experience, particularly youth and families. The department has received complaints that some persons are monopolizing bank space on CFLs by utilizing large numbers of taking devices. Therefore, the proposed amendment would restrict the number of devices that a person could employ while fishing on a CFL. The proposed amendment would exempt lakes on state parks because per-person angling effort on state park lakes is well dispersed and user conflicts have not been documented. The proposed amendment is necessary to ensure equitable distribution of angling opportunity and prevent user conflicts.

The current harvest regulations for largemouth bass on Lake Nacogdoches consist of a 14 - 21 inch slot limit and a five-fish daily bag limit, and anglers are allowed to retain one bass of 21 inches or greater in length per day. The proposed amendment to §65.72 would implement a 16-inch maximum length limit, and anglers would be allowed to temporarily retain live fish 24 inches or larger in a livewell for purposes of weighing for possible inclusion in the department's ShareLunker program; however, oversized fish would have to be released if not accepted by the department. The proposed amendment is necessary because the department has determined that Lake Nacogdoches is capable of producing trophy-quality largemouth bass. Lake Nacogdoches currently supports a high-quality largemouth bass fishery with potential for development. It has demonstrated trophy largemouth bass potential, having produced four fish heavier than 13 pounds. A 14 - 21 inch slot limit was implemented in 1988 to provide increased numbers of quality-sized bass. Spring quarter creel surveys from 2001 and 2005 indicated high directed fishing effort and catch rates for largemouth bass. During the 2001 survey, anglers expressed concern that catch rates of trophy largemouth bass had declined. Additionally, 52% of anglers indicated that they would potentially harvest a largemouth bass larger than 21 inches and 5% of anglers indicated that they would always harvest a fish larger than 21 inches. Largemouth bass growth is adequate, with fish reaching 14 inches in 2.6 years, and electrofishing catch rates and recruitment are high. Therefore, increasing the minimum length limit and implementing catch-and-release only rules will allow the population of larger fish to increase.

Current regulations on Lakes Raven and Purtis Creek restrict angling to catch-and-release only, but provide for temporary retention of live largemouth bass 21 inches or longer in length for weighing at department-operated weigh stations. The proposed amendment would increase the length limit for temporary retention to 24 inches, allow for the weighing of fish by means of per-

sonal scales, and eliminate the requirement for weighing at a department-operated weigh station. As on Lake Nacogdoches, oversized fish would have to be released if not accepted by the department's ShareLunker program. The rule is necessary to explore the possibility of creating a trophy largemouth bass fishery and to address problems associated with the unavailability of weigh stations for public use at all times.

There are currently no daily bag or minimum length limits for common carp on Lady Bird Lake (formerly Town Lake, in Travis County). The proposed amendment to §65.72 would implement a daily bag limit of one common carp 33 inches or larger per day with an unrestricted harvest of common carp less than 33 inches. Lady Bird Lake is a 468-acre impoundment located on the Colorado River adjacent to downtown Austin. Recently, the reservoir has received national and worldwide notoriety for producing documented catches of numerous large common carp. During a carp tournament in 2006, one angler landed a new state rod-and-reel record for common carp, weighing 43.13 pounds. Carp-angling groups organize catch-and-release tournaments and have advocated for protecting the trophy carp population in Lady Bird Lake from harvest. The proposed length limit is based on the Gabelhouse equation that sets trophy length at approximately 75% of world-record length. The proposed amendment is necessary to explore the possibility of establishing Lady Bird Lake as a premier fishery for common carp.

Current regulations for spotted bass on Lake Texoma establish a 14-inch minimum length limit. The proposed amendment would eliminate the minimum length and implement the statewide length limit (no length limit for spotted bass on Lake Texoma). The 14-inch minimum length limit for spotted bass on Lake Texoma is the only exception to the statewide spotted bass limit and was implemented to create uniform regulations on both the Texas and Oklahoma sides of Lake Texoma. The Oklahoma Department of Wildlife Resources (ODWR) is proposing to remove both the length and bag limits for spotted bass in all Oklahoma waters, except Lake Texoma. ODWR has agreed to retain the five-fish bag limit for Lake Texoma in order to remain consistent with the bag limit in Texas.

Current regulations for red drum on Lake Nasworthy allow for unrestricted bag and possession limits. Red drum were stocked on the lake prior to 2002 because the power plant on the lake provided warm water discharges sufficient to sustain populations through cold weather. In 2002, the power plant began operating on an as-needed basis, resulting in a partial red drum kill during the winter of 2002-2003. The department has determined that a viable population of red drum no longer exists in Lake Nasworthy, making the exception to the statewide standards superfluous.

Current harvest regulations for red drum on Lake Colorado City consist of a 20-inch minimum length limit and no daily bag limit. The department has discontinued the stocking of red drum on Lake Colorado City because of the presence of and continued threat of fish kills due to golden alga. A viable population of red drum no longer exists in Lake Colorado City; therefore, the exception to the statewide standard is no longer necessary.

Current regulations allow the harvest of catfish by means of lawful archery equipment until August 31, 2008. The proposed amendment to §65.72 would extend the applicability of that provision for three years, expiring August 31, 2011. The proposed amendment is necessary to allow the department to continue to evaluate the impact of the regulation on catfish populations.

Another portion of the proposed amendment to §65.72 would establish a total annual catch (TAC) for menhaden of 31,500,000 pounds per year. Under current rules, a boat may not take or assist in taking menhaden in tidal waters unless the appropriate menhaden license has been obtained. The menhaden season opens on the third Monday in April and runs through the first day in November. There are no daily bag limits or trip limits, but menhaden may not be taken within one-half mile of the shore or one mile of a jetty or pass. The proposed amendment would keep the current rules but, in addition, would close the fishery once the TAC has been reached. The TAC of 31,500,000 pounds is the five-year average catch from 2002 through 2006.

Public Benefit and Cost: The primary benefits of the proposed rule are: (1) protection of the menhaden population; and (2) protection of bycatch species. Menhaden is a primary component of the gulf estuarine marine ecosystem. When considering predator-prey relationships, it is a key forage species for many other species in the gulf. Menhaden eggs and larvae are food for various filter-feeding and larval fishes and invertebrates including but not limited to themselves, other clupeids, chaetognaths, coelenterates, mollusks, and ctenophores. Fishes known to eat menhaden include: the mackerels, bluefish, sharks, white and spotted seatrout, blue runner, ladyfish, longnose and alligator gars, and red drum. Piscivorous birds that have been found to consume menhaden include: brown pelicans, osprey, common loons, and terns. Marine mammals have also been reported as predators of menhaden. (Gulf States Marine Fisheries Commission Regional Management Plan #99, 2002). The proposed rule would allow continued commercial harvest of menhaden, but would prevent significant expansion of this industry in Texas waters.

In addition, the bycatch (the non-target species caught in menhaden nets and usually killed) from this fishery is also part of the ecosystem; thus, the impacts of menhaden harvest on other fisheries and the aquatic ecosystem must also be considered. The department estimates that at current harvest levels the total bycatch in Texas waters from the commercial menhaden industry is approximately 415,000 organisms per year. The top five bycatch species by number are Atlantic croaker (25%), striped mullet (17%), gafftopsail catfish (12%), silver seatrout (10%), and Spanish mackerel (9%) (in rank order of the catches with the approximate percent by number in parenthesis). Additionally, there are other key recreational species such as red drum and sharks. The approximate number of red drum and sharks mortalities associated with the current menhaden harvest is 1,600 and 31,000, respectively. The red drum fishery in the federal waters of the Gulf of Mexico remains completely closed to any directed commercial or recreation fishing to ensure the stocks will recover from being overfished. Similarly, sharks have undergone greater protection since bycatch studies were performed and further regulatory action for some species is being contemplated (Federal Register - July 27, 2007). Limits for recreational fishermen have been significantly curtailed and quota restrictions have been implemented to protect shark species. The proposed rule would prevent expansion of bycatch from this industry beyond current levels.

The probable economic cost to persons required to comply with the rule would be loss of revenue from potential catch in excess of the TAC. In the period from 2002 to 2006, the catch exceeded the proposed TAC by 30 million pounds in 2002 and 1.3 million pounds in 2005. In the other three years in that period, the actual catch was less than the TAC. Assuming that the next five years are comparable to the 2002-2006 period, the cost to persons

required to comply with the rule can be estimated as the loss of revenue from 31.3 million pounds of menhaden for the entire five-year period.

The agency has determined that this rule will not have any impact on local economies. The agency expects that approximately the same number of Texas vessels and employees will continue to be involved in the fishery if the proposed TAC is adopted, since the TAC is proposed to be set at the historical average catch over the last five years. The number of licenses issued remained fairly steady from 2002 to 2006 despite variation in the actual catch. No processing facilities for menhaden are currently located in Texas (no menhaden fish plant licenses were issued from 2002 to 2006 under Texas Parks and Wildlife Code, §47.016).

Although the agency has determined that Texas Government Code, §2001.0225, does not apply to the proposed amendment, the agency nonetheless provides the following regulatory analysis: The primary benefits of the proposed rule are: (1) protection of the menhaden population; and (2) protection of bycatch species. Menhaden is a primary component of the gulf estuarine marine ecosystem. When considering predator-prey relationships, it is a key forage species for many other species in the gulf. Menhaden eggs and larvae are food for various filter-feeding and larval fishes and invertebrates including but not limited to themselves, other clupeids, chaetognaths, coelenterates, mollusks, and ctenophores. Fishes known to eat menhaden include: the mackerels, bluefish, sharks, white and spotted seatrout, blue runner, ladyfish, longnose and alligator gars, and red drum. Piscivorous birds that have been found to consume menhaden include: brown pelicans, osprey, common loons, and terns. Marine mammals have also been reported as predators of menhaden. (GSMFC Regional Management Plan #99, 2002). The proposed rule would allow continued commercial harvest of menhaden, but would prevent significant expansion of this industry in Texas waters.

In addition, the bycatch from this fishery is also part of the ecosystem; thus, the impacts of menhaden harvest on other fisheries and the aquatic ecosystem must also be considered. The department estimates that at current harvest levels the total bycatch in Texas waters from the commercial menhaden industry is approximately 415,000 organisms per year. The top five bycatch species by number are Atlantic croaker (25%), stripped mullet (17%), gafftopsail catfish (12%), silver seatrout (10%), and Spanish mackerel (9%) (in rank order of the catches with the approximate percent by number in parenthesis). Additionally there are other key recreational species such as red drum and sharks. The approximate number of red drum and sharks mortalities associated with the current menhaden harvest is 1,600 and 31,000, respectively. The red drum fishery in the federal waters of the Gulf of Mexico remains completely closed to any directed commercial or recreation fishing to ensure the stocks will recover from being overfished. Similarly, sharks have undergone greater protection since bycatch studies were performed and further regulatory action for some species is being contemplated (Federal Register - July 27, 2007). Limits for recreational fishermen have been significantly curtailed and quota restrictions have been implemented to protect shark species. The proposed rule would prevent expansion of bycatch from this industry beyond current levels.

The probable economic cost to persons required to comply with the rule would be loss of revenue from potential catch in excess of the TAC. In the period from 2002 to 2006, the catch exceeded the proposed TAC by 30 million pounds in 2002 and 1.3 million pounds in 2005. In the other three years in that period, the actual catch was less than the TAC. Assuming that the next five years are comparable to the 2002-2006 period, the cost to persons required to comply with the rule can be estimated as the loss of revenue from 31.3 million pounds of menhaden over a five-year period.

Other regulatory alternatives the agency considered were: (1) leaving the rule unchanged, and (2) a limited-entry program comparable to that authorized in Texas Parks and Wildlife Code, Chapter 47, for other commercial finfish fisheries. The agency chose not to leave the rule unchanged, because this alternative would allow unlimited expansion of the fishery in Texas and the consequent effects on both menhaden and bycatch. The agency did not propose a limited-entry program because Chapter 47 appears to exclude the menhaden industry from the group of fisheries for which a limited entry program is authorized. Accordingly, establishment of a limited-entry program would require legislative action. The alternative chosen, establishment of a TAC, is a performance-based approach which does not specify a single method of compliance. The data and information used to do this analysis was landings data from previous years, information from the Gulf States Marine Fisheries Commission Management Plan, stock assessments, and consideration of the fishing and reporting practices currently used in the fishery. This rule proposal is also an opportunity for public comment on this draft impact analysis, and all comments will be addressed in the publication of the final regulatory analysis.

Mr. Robert Macdonald, Regulations Coordinator, has determined that, for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no economic costs to persons required to comply with the rules as proposed, except as specifically discussed elsewhere in this preamble.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and, therefore, do not directly affect small businesses or micro-businesses. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required. The reasoning for that finding, on a section-by-section basis, is as follows.

The proposed amendment to §56.9 would have the effect of making regulatory language consistent with statutory language, which is nonsubstantive in nature and, therefore, will not result in an adverse economic effect on small businesses or microbusinesses.

The proposed amendment to §56.10 would alter the documentation that individual hunters are required to possess for the purpose of proving the gender of harvested deer. Because the direct effect of the proposed rule is to simplify regulatory documentation requirements and affects only individual hunters, it will not result in an adverse economic effect on small businesses or microbusinesses.

The proposed amendment to §65.11 would eliminate a requirement affecting archery equipment. The direct effect of the proposed amendment would be the elimination of an equipment restriction. The proposed amendment would not directly regulate any business and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or require the purchase or modification of equipment or services by small businesses or microbusinesses.

The proposed amendment to §65.42 would open seasons for mule deer in three counties where currently there is no open season and would implement the season countywide in one county where the season is currently limited to a portion of the county. The department has determined that the proposed amendment does not directly regulate small or micro-businesses and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

The proposed amendment to §65.60, concerning Pheasant, would start the pheasant season in the Panhandle one week later than the current opening day and extend the total length of the season by seven days. The department has determined that small or micro-businesses will not be affected by the proposed rule because the proposed rule would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

The proposed amendment to §65.62, concerning Quail: Open Season, Bag, and Possession Limits, would extend the quail season to run concurrently with the period of validity for Level 2 and 3 Managed Lands Deer Permits. The department has determined that small or micro-businesses will not be affected by the proposed rule; and the proposed rule would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

One portion of the proposed amendment to §65.72, concerning Fish, would restrict anglers to a maximum of two lines/poles on community fishing lakes (CFLs). The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects gear restrictions for individual recreational anglers and would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would implement a 16-inch maximum length limit for largemouth bass on Lake Nacogdoches. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects recreational limits for anglers and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would increase the length limit for largemouth bass on Lakes Purtis Creek and Raven and eliminate the requirement for weighing at a department-operated weigh station. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects recreational limits for anglers, eliminates a provision requires anglers to travel to a specific location to weigh fish, and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would implement a daily bag limit of one common carp 33 inches or larger per day with an unrestricted harvest of common carp less than 33 inches on Lady Bird Lake. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects recreational limits for anglers and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would eliminate the minimum length for spotted bass on Lake Texoma. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects recreational limits for anglers and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would eliminate the exceptions to statewide regulations for red drum on Lakes Nasworthy and Colorado City. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects recreational limits for anglers and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or

modification of equipment or services by small businesses or micro-businesses.

Current regulations allow the harvest of catfish by means of lawful archery equipment until August 31, 2008. The proposed amendment would extend the applicability of that provision for three years in order to allow the department to continue to evaluate the impact of the regulation on catfish populations. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses, because the rule affects gear restrictions for recreational anglers and does not directly regulate any type of business. The proposed amendment would not impose recordkeeping or reporting requirements; impose taxes or fees; affect sales, profits, or market competition; or necessitate the purchase or modification of equipment or services by small businesses or micro-businesses.

Another portion of the proposed amendment to §65.72 would establish a total allowable catch for menhaden. The department has determined that there will be no direct adverse economic impacts to small or micro-businesses. The only business affected by the proposed rule does not meet the statutory description of a small or micro-business because it employs more than 100 people and exceeds $6 million in annual gross receipts.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone (area code 512) or e-mail to Robert Macdonald (Wildlife 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us); Ken Kurzawski (Inland Fisheries 389-4591; e-mail: ken.kurzawski@tpwd.state.tx.us); Paul Hammerschmidt (Coastal Fisheries 389-4650; e-mail: paul.hammerschmidt@tpwd.state.tx.us); or David Sinclair (Law Enforcement 389-4854; e-mail: david.sinclair@tpwd.state.tx.us); Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.9 - 65.11

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and Chapter 67, which authorizes the commission by regulation to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 67.

§65.9. Open Seasons; General Rules.

(a) Except as provided under Parks and Wildlife Code, §62.001, no person may hunt a wild animal or bird when the person is on a public road or right-of-way. [~~There is no open season on game animals or game birds on public roads and highways or in the right-of-way of public roads and highways.~~]

(b) No antlerless deer permit is required to take an antlerless deer during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(c) The hunting of roosting turkey is unlawful.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's permanent residence and is finally processed.

(b) A person who lawfully takes a deer is exempt from the tagging requirements of Parks and Wildlife Code, §42.018 if the deer is taken:

(1) under the provisions of §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) under the provisions of §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(4) under an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(5) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(6) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271 [~~§11.0272~~];

(7) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program; or

(8) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(c) A person who kills a bird or animal under circumstances that require the bird or animal to be tagged with a tag from the person's hunting license shall immediately attach a properly executed tag to the bird or animal.

(d) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed. Proof of sex is as follows:

(1) turkey (in a county where the bag composition is restricted to gobblers and/or bearded hens):

(A) male turkey:

(i) one leg, including the spur, attached to the bird; or

(ii) the bird, accompanied by a patch of skin with breast feathers and beard attached.

(B) female turkey taken during the fall season: the bird, accompanied by a patch of skin with breast feathers and beard attached.

(2) deer:

(A) buck: the head, with antlers still attached;

(B) antlerless: the head;

(3) antelope: the unskinned head; and

(4) pheasant: one leg, including the spur, attached to the bird or the entire plumage attached to the bird.

(e) No additional proof of sex is required for a deer that is lawfully tagged in accordance with:

(1) the provisions of §65.26 of this title;

(2) the provisions of §65.34 of this title;

(3) the provisions of §65.28 of this title;

(4) the provisions of §65.32 of this title;

(5) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0271; or

(6) under the provisions of §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits).

(f) [~~(e)~~] In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant; or

(2) if the deer is to be tested by the department for chronic wasting disease, obtain a department-issued receipt (PWD 905).

(g) [~~(f)~~] A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer, turkey, or antelope, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches either the possessor's permanent residence or a cold storage/processing facility and is finally processed.

(2) For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor's permanent residence and is finally processed.

(3) The wildlife resource document must contain the following information:

(A) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts);

(D) the date the wildlife resource was killed or caught; and

(E) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(4) A taxidermist who accepts a deer or turkey shall retain the wildlife resource document or tag accompanying each deer or turkey for a period of two years following the return of the resource to the owner or the sale of the resource under the provisions of Parks and Wildlife Code, §62.023.

(h) [~~(g)~~] It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possesses a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

(i) [~~(h)~~] The identification requirements for desert bighorn sheep skulls are as follows.

(1) No person may possess the skull of a desert bighorn ram in this state unless:

(A) one horn has been marked with a department identification plug by a department representative; or

(B) the person also possesses evidence of lawful take in the state or country where the ram was killed.

(2) A person may possess the skull and horns of a desert bighorn ram found dead in the wild, provided:

(A) the person did not cause or participate in the death of the ram;

(B) the person notifies a department biologist or game warden within 48 hours of discovering the dead ram and arranges for marking with a department identification plug by a department representative; and

(C) the landowner on whose property the skull was found signs an affidavit prior to the time the skull is marked that attests the place and date that the person discovered the ram.

(3) Individual horns may be possessed without any identification or documentation.

(4) This subsection does not apply to skulls possessed prior to July 11, 2004.

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt alligators, game animals, and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section.

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt alligator, deer, antelope, or desert bighorn sheep.

(D) It is unlawful to hunt alligators, game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(E) In Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria counties, alligators may not be hunted by means of firearms. In all other counties, alligators may by hunted by means of firearms on private property, including private waters, but may not be hunted by means of firearms from, on, in, across, or over public water.

(F) Alligators lawfully caught on a taking device may be dispatched by means of firearms in all counties.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment or crossbow during a special muzzleloader-only deer season.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow[~~:~~]

[~~(i)~~ ~~the bow must have a minimum peak draw weight of 40 pounds at the time of hunting; and~~]

[~~(ii)~~] the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. A mechanical broadhead must begin to open upon impact and when open must be a minimum of 7/8-inch in width.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3) Crossbow. Crossbows are lawful during any general open season. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(5) Alligator.

(A) Legal devices for taking alligators in the wild are as follows:

(i) hook and line (line set);

(ii) alligator gig;

(iii) lawful archery equipment and barbed arrow;

(iv) hand-held snare with integral locking mechanism; and

(v) lawful firearms, in counties where take by firearm is allowed.

(B) A line of at least 300-pound test shall be securely attached to all taking devices other than firearms used to hunt alligators. Except as provided in this subsection, hook-bearing lines must be attached to a stationary object capable of maintaining a portion of the line above water when an alligator is caught on the line. A line attached to an arrow, snare, or gig must have a float attached when used to take alligators. The float shall be no less than six inches by six inches by eight inches, or, if the float is spherical, no less than eight inches in diameter.

(C) Line-set provisions.

(i) Hook-bearing lines may not be set prior to the general open season and shall be removed no later than sunset of the last day of the open season.

(ii) From sunset to one-half hour before sunrise:

(I) no person shall use any taking device other than line sets to hunt alligators; and

(II) no person shall set any baited line capable of taking an alligator and no person shall remove alligators from line sets.

(iii) On a property for which the department has issued hide tags, no person shall set more than one line per unused hide tag in possession.

(iv) On a property that is not in a county listed in paragraph (1)(E) of this section and for which the department has not issued hide tags, no person shall set more than one line.

(v) Line sets shall be inspected daily, and alligators shall be killed, tagged or documented, and removed immediately upon discovery.

(vi) All line sets on properties for which hide tags have been issued shall be secured at one end on the tract of land specified for the hide tags. All other line sets shall be secured at one end on private property.

(vii) Each baited line shall be labeled with a plainly visible, permanent, and legibly marked gear tag that contains:

(I) the full name and current address of the person who set the line;

(II) the hunting license number of the person who set the line; and

(III) a valid hide tag number, if the line is set on a property for which hide tags have been issued.

(6) Use of laser sighting devices.

(A) A person who is legally blind may use a laser sighting device to hunt game animals and game birds during lawful hunting hours in open seasons, provided the person is assisted by a person who:

(i) is not legally blind;

(ii) has a hunting license; and

(iii) is at least 13 years of age.

(B) A person who uses a laser sighting device must have in possession a signed statement from a physician or optometrist to the effect that the person is legally blind by the standard of Government Code, §62.104, and must present the statement to any peace officer or department employee acting within the scope of official duties.

(C) All provisions concerning hunter education requirements apply.

(7) Special Provisions.

(A) Desert bighorn sheep. Except as provided in this paragraph, no motorized conveyance of any type shall be used to herd or harass desert bighorn sheep.

(B) Hunting by remote control. It is an offense for any person to hunt a wildlife resource by the means listed in this section if that person is not physically present and personally operating the means of take at the location where the hunting occurs during the time that the hunting occurs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800787
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.60, 65.62

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and Chapter 67, which authorizes the commission by regulation to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 67.

§65.42. Deer.

(a) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(6) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(7) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(5) In Bell (west of IH 35), Bosque, Comanche, Coryell, Eastland, Erath, Hamilton, Lampasas, Somervell, and Williamson (west of IH 35) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south if U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(7) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby, counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(8) In Bowie, Camp, Cherokee, Delta, Fannin, Franklin, Gregg, Hopkins, Houston, Lamar, Morris, Red River, Rusk, Titus, Upshur, and Wood counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(9) In Austin, Bastrop, Bell (east of IH 35), Burleson, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Leon, Rains, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of IH 35), and Wilson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two, by MLDP antlerless or LAMPS permit only.

(10) In Archer, Armstrong, Baylor, Borden, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Haskell, Hemphill, Hood, Hutchinson, Jack, Jones, Kent, King, Knox, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Randall, Roberts, Scurry, Shackelford, Stephens, Stonewall, Swisher, Taylor, Throckmorton, Wheeler, Wise, and Young counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(11) In Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(12) In Denton and Tarrant counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(13) In Brazos, Grayson, Grimes, Madison, and Robertson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits, except on the Hagerman National Wildlife Refuge.

(D) Special regulation. In Grayson County, lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties.

(14) In Anderson, Crane, Ector, Ellis, Falls, Freestone, Henderson, Hunt, Kaufman, Limestone, Loving, Midland, Milam, Navarro, Smith, Van Zandt, and Ward counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless or LAMPS permits.

(15) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless permit.

(16) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hud-

speth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(17) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(18) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(19) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (14) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLDP properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews [~~(west of U.S. Highway 385)~~], Bailey, Cochran, Gaines, Hockley, Lamb, Martin, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.60. Pheasant; Open Seasons, Bag, and Possession Limits.

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: from the second [~~First~~] Saturday in [~~of~~] December for 37 [~~30~~] consecutive days.

(2) Daily Bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(b) In Chambers, Jefferson, and Liberty, counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Daily bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(c) In all other counties, there is no open season on pheasants.

(d) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

§65.62. Quail: Open Seasons, Bag, and Possession Limits.

(a) In all counties there is an open season for quail beginning the Saturday closest to October 28 through the last day [~~Sunday~~] in February.

(b) Daily bag limit: 15 quail.

(c) Possession limit: 45 quail.

(d) There is no open season on Mearns' quail (commonly called fool's quail).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; and Chapter 67, which authorizes the commission by regulation to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapters 61 and 67.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) The bag and possession limits of this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Chapter 57, Subchapter C of this title (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(4) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this subparagraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source.

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use any vessel to harass fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(5) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(6) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico. No person may land red snapper in Texas for commercial purposes unless that person is in compliance with the provisions of this clause.

(I) Requirement for Individual Fishing Quota (IFQ) vessel endorsement and allocation. No person aboard any vessel shall sell, barter, trade, or exchange red snapper; land or attempt to land red snapper for the purpose of sale, barter, trade, or exchange; or possess red snapper for the purpose of sale, barter, trade, or exchange unless the person possesses a valid federal permit for the harvest of Gulf of Mexico Reef Fish and a valid federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

(-a-) No person shall harvest or land red snapper for the purpose of sale, barter, trade, or exchange, without holding or being assigned federal IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location.

(-b-) At-sea or dockside transfer of red snapper from one vessel to another vessel for the purpose of sale, barter, trade, or exchange, is prohibited.

(-c-) Except as provided in this subparagraph, no person shall purchase, sell, exchange, barter, or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which federal commercial license, permit, and appropriate allocation were issued.

(-d-) On the last fishing trip of the year, a vessel may exceed by 10% the remaining IFQ allocation.

(II) Offloading and transfer. During the hours from 6:00 p.m. until 6:00 a.m. (local time), no person shall offload from a vessel or receive from a vessel red snapper harvested for the purpose of sale, barter, trade, or exchange. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries.

(III) Recreational limits. Persons aboard a vessel for which permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may retain reef fish under the recreational take and possession limits specified in subsection (b) of this section, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

(IV) VMS requirement. No person shall harvest red snapper for the purpose of sale, barter, trade or exchange, from a vessel unless that vessel is equipped with a fully operational and federally approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

(V) Requirement for IFQ dealer endorsement. In addition to the requirement for a federal dealer permit for Gulf reef fish, a dealer must have a federal Gulf red snapper IFQ dealer endorsement in order to receive Gulf red snapper from a commercial fishing vessel. A person aboard a vessel with a federal Gulf red snapper IFQ vessel endorsement must also have a federal Gulf red snapper IFQ dealer endorsement to sell to anyone other than a permitted dealer.

(VI) Requirement for transaction approval code. The owner or operator of a vessel landing red snapper for the purpose of sale, barter, trade, or exchange is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of red snapper for the purpose of sale, barter, trade, or exchange, from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

(VII) Wholesale dealers. Wholesale dealers are required to comply with the provisions of Parks and Wildlife Code, §66.019, when acquiring, purchasing, possessing, and selling red snapper. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper on purchases and sales on records.

(VIII) Recreational limit. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has

been issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit specified in subsection (b) of this section for red snapper, and such fish may not be bartered or sold.

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species.

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(7) Menhaden. The commercial season for menhaden *(Brevoortia patronus)* is open beginning on the third Monday in April and will continue until whichever of the following first occurs:

(A) the first day in November; or

(B) the total catch for the season has reached 31,500,000 pounds.

(8) [~~(7)~~] In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Except as provided in subparagraph (D) of this paragraph, the statewide daily bag and length limits shall be as follows. Figure: 31 TAC §65.72(b)(2)(C) (No change.)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Freshwater species.
Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Saltwater species.
Figure: 31 TAC §65.72(b)(2)(D)(ii) (No change.)

(iii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iv) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(v) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game and non-game fish may be taken by pole and line only in:

(A) community fishing lakes; however, on community fishing lakes that are not within or part of a state park, no person may employ more than two devices (i.e., poles or lines) at the same time;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish, channel catfish, blue catfish, and flathead catfish may be taken with lawful archery equipment or crossbow. After August 31, 2011 [~~2008~~], only nongame fish may be taken by means of lawful archery or crossbow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand # 530), sisal twine (comparable to Lehigh brand # 390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore[~~, and only during the period of time beginning the third Monday in April through the first day in November each year~~].

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For

purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800789
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 23, 2008
For further information, please call: (512) 389-4775

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy withdraws the proposed amendments to §523.132 which appeared in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1075).

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800804
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 11, 2008
For further information, please call: (512) 305-7848

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER S. FINANCIAL ASSURANCE FOR ON SITE DISPOSAL OF RADIOACTIVE SUBSTANCES

30 TAC §37.9001

The Texas Commission on Environmental Quality withdraws the proposed amendments to §37.9001 which appeared in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6045).

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800755
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 8, 2008
For further information, please call: (512) 239-6087

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SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES

30 TAC §§37.9030, 37.9035, 37.9040, 37.9045

The Texas Commission on Environmental Quality withdraws the proposed amendments to §§37.9030, 37.9035, 37.9040, and 37.9045 which appeared in the September 7, 2007, issue of the *Texas Register* (30 TexReg 6045).

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800756
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 8, 2008
For further information, please call: (512) 239-6087

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER G. LENDING POWERS

7 TAC §91.704

The Credit Union Commission adopts amendments to §91.704, concerning real estate lending, without changes to the proposed text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7811). The amendments incorporate the mortgage fraud notice requirements set out in House Bill 716, passed by the 80th Legislature, add a definition of home loan, and correct two typographical errors.

The amendments to the rule clarify that credit unions must provide the mortgage fraud notice required by the recent amendment to Chapter 343 of the Finance Code, which requires lenders making home loans to notify borrowers of the penalties for making false or misleading statements to obtain a residential mortgage loan. The definition of home loan is identical to Finance Code §343.001(2).

The Commission received no comments with respect to this rule amendment. A public hearing on the amendments was held at the Department offices on January 18, 2008 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the amendments is Texas Finance Code, §124.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800795

Harold E. Feeney
Commissioner
Credit Union Department
Effective date: March 2, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1, §255.7

The Office of Rural Community Affairs (Office) adopts amendments to §255.1 and §255.7, concerning general provisions for the Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Block Grant Program. Section 255.7 is adopted with changes to the text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8627) and will be republished. Section 255.1 is adopted without changes and will not be republished.

The amendments are being adopted to establish the standards and procedures by which the Office and the Texas Department of Agriculture will allocate and distribute funds, and make changes to the application and selection criteria for the programs available under the Texas Capital Fund. The amendments are adopted under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

The director of the Texas Community Development Program, has determined that for the period that the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The director also has determined that for the period that the sections are in effect, the public benefit as a result of enforcing the sections will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Adopted §255.1(g)(2) adjusts time for appeals to be filed. Adopted §255.7(f) revises the application scoring system. Adopted §255.7(l)(2)(B) and (F) revises the Downtown Revitalization Program application scoring categories to be consistent with language in §255.7(f).

A public hearing on this proposal was held in Austin on December 4, 2007, at 9:30 a.m. in the Stephen F. Austin building, located at 1700 N. Congress Ave., Austin in the first floor meeting Room 170. The hearing was attended by twenty-six (26) people. Oral comments were provided by six (6) attendees. The department/office received comments from Steve Butcher, Marc Maxwell, David L. Schroeder, Gary Traylor, Kim Lacey and James Yohe. The department/office appreciates the comments and made no changes to the rules in response to these comments.

General comments in support of the rule package and the application process were received from Steve Butcher, Donna Chatham, Genora Young, Gary Traylor, Cloy Richards, Amanda Nobles, Tom Mullins, Billy Clemons, David Schroeder, Kim Lacy and James Yohe. The department/office appreciates the comments and made no changes to the rules in response to these comments.

A telephone conference call, on November 30, 2007, was conducted to discuss and solicit comment from the following economic development leaders: Donna Chatham

Executive Director, Association of Rural Communities in Texas; Charles Thomas, President/CEO, Carthage Economic Development Corporation and Northeast Texas Economic Developer's Roundtable; Lori Vincent, Executive Director, The High Ground of Texas; Cloy Richards, Economic Development Director, City of West Tawakoni; and Nicki Harle, Director, Texas Midwest Community Network. The department/office appreciates the comments and made no changes to the rules in response to these comments.

The amendments are adopted under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available.

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications.

(3) A firm financial commitment from all funding sources.

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less; and 4:1 for awards of $750,000 to $1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; and $10,000 for awards of $750,001 to $1,000,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street or downtown business district geographic area and the assisted business will create or retain jobs to meet the national program objective.

(12) The TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $2 million in total awards during the program year. Additionally, no more than $1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is $1 million and the minimum award amount is $750,100. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less $600,000 for the main street program, and $1,200,000 for the downtown revitalization program, as follows:

(A) First round. 30% of the annual allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding.

(B) Second round. 40% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding.

(C) Third round. 50% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. In the event there are sufficient funds to fund 50% or more of an application request, but less than 100%, additional funds may be allocated to allow full or 100% funding. If only three application rounds are scheduled, all remaining funds will be allocated to the final round.

(D) Fourth round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefiting business (either a for-profit entity or a non-profit entity).

(3) The main street program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 p.m. on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TxCDBG funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) The TDA Commissioner reviews the recommendation and announces the final decision.

(8) TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the job impact. Thus, preference is given to the applicant with the greater job impact.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the number of jobs proposed to be created and/or retained in the application. Thus, preference is then given to the applicant with the greater number of jobs.

(2) Community Need (maximum 40 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 5 points). Awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the community is economically below the state average.

(B) Poverty (maximum 10 points). Awarded if the applicant's annual county poverty rate for individuals (from the 2000 Census) is higher than the annual state rate for individuals (from the 2000 Census), indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4%; and score 10 points if this figure exceeds the state average of 17.7%.

(C) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) Community Population/Size (maximum 10 points). Points are awarded to applying small cities and counties using 2000 Census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,000. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,000. Community population figures are net of the population held in adult or juvenile correctional institutions/facilities.

(E) Per Capita Income (maximum 5 points). Five points awarded to applicants that have a per capita income below $19,617.

(3) Jobs (maximum 35 points).

(A) Job Impact (maximum 15 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds .00485; score 10 points if this figure exceeds .00969; and score 15 points if this figure exceeds .01455. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) Wage Impact (maximum 10 points). Awarded by taking the business' average weekly wage commitment, for all jobs proposed to be created and retained, and dividing by applicant's most recent county, quarterly, private sector average weekly wage. Score 5 points if this figure exceeds .50; score 10 points if this figure exceeds .60.

(C) Cost per Job (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $15,000--10 points.

(ii) Below $20,000--5 points.

(4) Business/Economics Emphasis (maximum 25 points).

(A) Preferred/Primary jobs (maximum 20 points). Awarded if the jobs to be created and/or retained are or will be employed by a benefiting business whose primary North American Industrial Classification System (NAICS) code number falls into the categories identified in clauses (i) - (iii) of this subparagraph. This is based on the NAICS number reported on the business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3, their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign or start-up businesses that have not had a NAICS code number assigned to them by either the TWC or IRS, may submit alternative documentation from TWC to support their primary business activity (NAICS code) to be eligible for these points.

(i) 20 points for the following NAICS category: 31-33 Manufacturing

(ii) 15 points for the following NAICS category: 111 Crop Production; 112 Animal, Poultry, and Egg Production; 113 Forestry/Logging; 114 Commercial Fishing; 115 Support Activities for Agriculture; 211-213 Mining; 42 Wholesale Trading; 48-49 Transportation/Warehousing; 51 Information (excluding 512-theaters); 5182 Data Processing, Hosting, and Related Services; 62 Health Care

(iii) 5 points for projects involving non-primary jobs, when the business offers a choice of medical prescription drug benefits to employees, including coverage for the family.

(B) Small/HUB businesses (maximum 5 Points). Awarded if each/the benefiting Business in a "multiple business" application employs less than 100 employees for all locations both in and out of state, or has been certified by the Comptroller of Public Accounts as a Historically Underutilized Business (HUB). This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

(3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(6) TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.

(7) The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.

(8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) one letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)

(ii) Score 10 points for letters from 75% or more of the businesses and/or property owners in the proposed Texas Capital Fund project area.

(B) Infrastructure Project Plan--(10 points). Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.

(C) ADA Compliance Goals--(10 points). Does the project address ADA accessibility issues? How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.

(D) Historic Preservation Ethic and Preservation Impact--Main Street's Role--(10 points). Preservation is a major component of the THC's Main Street program. Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:

(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.

(ii) Does the city have a current historic preservation ordinance?

(iii) Does the city have any historic preservation related programs or incentives?

(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?

(E) State Enterprise Zone and Economic Development Consideration--(10 points) Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three points will be awarded if the city has the economic development sales tax (4A, 4B or both). Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.

(F) Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(G) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.

(3) Applicant (maximum 30 points). There are three applicant scoring categories each worth 5 to 10 points.

(A) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.

(B) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(C) Main Street Standing (maximum 10 points). If the Main Street program received National Recognition the prior year, 10 points will be awarded.

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(l) Scoring criteria for the downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available annual county

poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available three (3) month county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate for individuals (from the 2000 Census) is higher than the annual state rate for individuals (from the 2000 Census), indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average of 15.4%; score 10 points if this figure exceeds 17.7%; and score 15 points if this figure exceeds 19.25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below $19,617.

(G) Leverage/Match (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Commercial Support (maximum 10 points). Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.

(J) Sidewalks and ADA Compliance (10 points). Points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title, and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800794
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: February 28, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 936-6734

♦ ♦ ♦

10 TAC §§255.9, 255.11 - 255.13, 255.17

The Office of Rural Community Affairs (Office) adopts the amendments to 10 Texas Administrative Code §§255.9, 255.11 - 255.13, and new §255.17 for the Community Development Block Grant (CDBG) non-entitlement area funds without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9903).

The adopted rules specify criteria contained within the 2008 Action Plan.

No comments were received regarding the adoption of the amendments.

The amendments and new section are adopted under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800754

Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: February 28, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 936-7887

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.71, §45.85

The Texas Alcoholic Beverage Commission adopts the amendment of §45.71, relating to definitions under Chapter 45, Subchapter C, relating to standards of identity for malt beverages, and §45.85, relating to approval of labels of malt beverages, without changes to the proposed text as published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8247). The rule will not be republished.

The commission received no comments regarding the proposed rules during the comment period.

The adoption of the amended rule is authorized by §5.31 of the Alcoholic Beverage Code (Code), which gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code and §101.67 of the Code, which provides the commission with authority to establish rules for submitting samples and assessing a fee for administration of the section.

Cross Reference: Sections 5.31 and 101.67 of the Alcoholic Beverage Code are affected by the amended rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800781
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: February 28, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 206-3204

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §61.48

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to 16 TAC Chapter 61, §61.48, regarding the regulation of combative sports without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5271) and will not be republished.

Section 61.48(e) is amended to increase the minimum insurance coverage that is required to be provided by an amateur combative sports association (ACSA) so that the coverage required for injuries sustained in an event is $50,000 and for payment in the case of death is $100,000. Section 61.48(h)(3) is amended to require that the physicians provided for an event by an ACSA must be registered by the department. Since physicians that register with the department are required to be licensed, this subsection is also amended to delete the requirement in this subsection that the physician must be licensed.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on August 24, 2007. The comment period closed on September 24, 2007. The proposed amendment to §61.48 was submitted to the Medical Advisory Committee at its meeting on July 27, 2007 along with 11 other amendments. Written comments on §61.48(e) were received from the Texas Amateur Mixed Martial Arts Association (TAMMA) and an individual. At the October 30, 2007, Commission meeting, TAMMA officials also presented oral comments. The Commission adopted the 11 other proposed amendments to the combative sports rules effective December 1, 2007, but directed staff to re-consider the recommendation to amend §61.48 in light of the comments submitted on this proposed amendment.

The comment from TAMMA states that its insurance company is unable to write insurance policies for amateur events above a $50,000 death benefit. Further, TAMMA asserts that the increased limits will effectively stop all amateur events in Texas; TAMMA events have not had a single serious injury or claim in the last 10 months; and admission price increases will not be able to support the increased cost of the requirement. The individual commenter notes that such an increase is arbitrary and unduly burdensome especially since there have been no significant injuries to an amateur competitor in a sanctioned event. The commenter expresses the concern that this rule amendment will limit licensed and regulated events and therefore increase underground unlicensed and inherently dangerous competitions.

The oral comments at the Commission meeting restated the two main contentions that were expressed in writing: 1) that there is only one company that will provide insurance at the proposed level; and 2) that the cost for that coverage would create a financial burden in excess of the income potential for these amateur events, thus effectively ending these worthwhile activities.

Additional research by staff has identified at least two companies that provide insurance coverage with a $100,000 death benefit. Historically, there have not been a large number of insurance providers in this field. This research confirms that the cost of the additional coverage will increase in the range of $500 to $2000, depending on the deductible and other conditions of the policy. Staff disagrees with the comments that the increased insurance coverages will be difficult to obtain and will be prohibitively expensive. While the increased cost may be viewed as significant, staff nonetheless maintains that the increased cost is minimal in comparison to the risk to which these individuals are exposed and in light of the level of injuries that can be sustained in these events. The amendment is adopted as proposed.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Chapter 2052, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2052 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800745
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2008
Proposal publication date: August 24, 2007
For further information, please call: (512) 463-7348

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16 TAC §61.80

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to 16 TAC Chapter 61, §61.80, regarding the combative sports program fees without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9203) and will not be republished.

The amendment to §61.80 reduces the annual license application and renewal fees for a contestant from $30 to $20 and reduces the permit fee per live professional event and the simultaneous telecast of a live contest on a closed circuit telecast in which fees are charged for admission, from $500 to $100.

The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The fees currently in place are above the amount required by the Department to cover costs. The decrease will not adversely affect the administration and enforcement of the combative sports program.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on December 14, 2007. The comment period closed on January 14, 2008. No public comments were received regarding the proposed rule.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Department to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800746
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 463-7348

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CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

16 TAC §64.80

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to 16 TAC Chapter 64, §64.80, regarding the temporary common worker employers application fees for initial and renewal licenses without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7178) and will not be republished.

Based on the Department's annual fee review conducted pursuant to Texas Occupations Code, §51.202, the Commission voted at its meeting on September 21, 2007, to decrease the application fees for initial and renewal licenses in the temporary common worker employers program because the application fees for initial and renewal licenses currently in place were above the amount required by the Department to cover costs. The decrease would not adversely affect the administration and enforcement of the temporary common worker employers program.

The amendment to §64.80(a) lowers the application fee for an initial license from $550 to $150. The amendment to §64.80(b) lowers the application fee for a renewal license from $550 to $150.

The proposed amendments were published in the *Texas Register* on October 12, 2007. The comment period closed on November 12, 2007. The Department did not receive any public comments on the proposed amendments to the existing rule.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800747

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-7348

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CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

16 TAC §71.80, §71.90

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to 16 TAC Chapter 71, §71.80 and §71.90, regarding the original and renewal registration fees and administrative penalties and sanctions for the warrantors of vehicle protection products without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7179) and will not be republished.

Based on the Department's annual fee review conducted pursuant to Texas Occupations Code, §51.202, the Commission voted at its meeting on September 21, 2007, to decrease the original and renewal registration fees for the warrantors of vehicle protection products because the fees currently in place are above the amount required by the Department to cover program costs. The decrease in fees will not adversely affect the administration and enforcement of the warrantors of vehicle protection products program. In addition to the fee changes, a few technical changes were made to the administrative penalties and sanctions section of the rules.

The amendment to §71.80(b) lowers the original registration fee for a warrantor of vehicle protection products from $500 to $350.

The amendment to §71.80(c) lowers the renewal registration fees for registrants who are warrantors of vehicle protection product (VPP) warranties. The renewal fees are based on the number of VPP warranties a warrantor has during the twelve (12) months preceding the date of the renewal application. For warrantors with 0 - 999 VPP warranties, the renewal fee has been reduced from $500 to $350; for warrantors with 1,000 - 1,999 VPP warranties, the renewal fee has been reduced from $1,000 to $750; and for warrantors with 2,000 or more VPP warranties, the renewal fee has been reduced from $1,500 to $1,000.

The amendment to §71.90 clarifies the sanction and penalty grounds by adding a general reference to the Commission rules and removing the specific reference to 16 Texas Administrative Code, Chapter 60.

The proposed amendments were published in the *Texas Register* on October 12, 2007. The comment period closed on November 12, 2007. The Department did not receive any public comments on the proposed rules.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2306, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2306. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800748
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-7348

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CHAPTER 73. ELECTRICIANS

16 TAC §73.10, §73.100

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code, ("TAC"), Chapter 73, §73.10 and §73.100 regarding the electricians program as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9203), without changes, and will not be republished.

The amendment to §73.10 adds a definition of the term "offer to perform" found in Texas Occupations Code §1305.151l to clarify and memorialize the agency's long-standing interpretation that advertising as an electrical contractor or electrical sign contractor or advertising that one performs electrical work or electrical sign work is an "offer to perform" within the meaning of the statutory provision that requires persons or entities who perform or offer to perform electrical work to be licensed.

The amendment to §73.100 adopts the most recent version of the National Electrical Code as the code for the state. This rule is necessary to comply with the provisions of Texas Occupations Code, §1305.101(a)(2) which requires the Commission to adopt the revised code after it is amended and published every three years.

Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on December 14, 2007. The comment period closed on January 14, 2008. No public comments were received regarding the proposed rules.

The amendments are adopted under Texas Occupations Code, Chapter 1305 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800749

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board adopts amendments to §1.16 concerning contracts for materials and services without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9204). Specifically, this amendment will provide that in certain instance in which the agency has no discretion with regard to grants or contracts, such contracts need not be approved by the Board or the Agency Operations Committee.

No comments were received regarding these amendments.

The amendments are adopted under Texas Education Code, §61.027 which provides the Coordinating Board with the authority to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800753
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 28, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 427-6114

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CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.20

The Texas Higher Education Coordinating Board (Coordinating Board, THECB, or Board) adopts the repeal of §§7.1 - 7.20 concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9487). Specifically this repeal replaces sections by new materials and the addition of new sections are §§7.1 - 7.24.

There were no comments received regarding this repeal.

The repeal is adopted under the Texas Education Code, Title 3, Chapter 61, Subchapter G, §§61.301 - 61.321, as amended, which provides the Coordinating Board with the authority to permit Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas to award degrees and which also provides the Board with authority to regulate the granting of degrees by Private and Out-of-State Public Post-Secondary Educational Institutions operating in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800683
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§7.1 - 7.24

The Texas Higher Education Coordinating Board adopts new §§7.1 - 7.24, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. Sections 7.3 - 7.8, 7.10, 7.11, 7.13 - 7.15, and 7.22 - 7.24 are adopted with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9488). Sections 7.1, 7.2, 7.9, 7.12, and 7.16 - 7.21 are adopted without changes and will not be republished.

Specifically, several new definitions, relating to recognition of accreditors and routes to alternative certification, have been added in §7.3. Current recognized accrediting agencies remain so and are embodied in §7.5. A new §7.4 is adopted as a means of recognizing accrediting agencies so long as they meet certain standards. Subsequent sections have been renumbered and clarifying amendments have been made to various rules, e.g., §§7.5, 7.6, 7.7, 7.8, 7.9, 7.10, and 7.11. New §§7.22 - 7.24 establish alternative routes to certification in an effort to remove potential barriers to entities operating in Texas or desiring to do so while at the same time preserving quality education standards.

Comments were received from the following organizations:

Accrediting Bureau of Health Education Schools (ABHES); Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT); Accrediting Council for Independent Colleges and Schools (ACICS); Baptist Health System (BHS); Career Colleges and Schools of Texas (CCST); Council on Occupational Education (COE); Independent Colleges and Universities of Texas (ICUT); ITT Educational Services, Inc. (ITT); HEB Ministries (HEB); Commission on Colleges, Southern Association of Colleges and Schools (SACS); Texas Board of Nursing (BON); Texas Nurses Association (TNA); Texas Public Policy Foundation (TPPF); Texas Workforce Commission; Virginia College at Austin (VCA).

The following comments were received regarding the new sections and amendments:

Comment: ITT pointed out a numbering error in §7.3(12).

Response: The Board agreed with this comment and §7.3(12) has been changed.

Comment: CCST, ITT, and VCA pointed out a possible need to clarify the description of "home campus" in §7.3(15).

Response: The Board rejected the comment in §7.3(15). The definition will be reviewed as part of the planned changes to be presented in April 2008.

Comment: HEB suggested removing "seminary" in §7.3(21).

Response: The Board agreed to remove the word "seminary" from §7.3(21).

Comment: SACS comment was that it is confusing to use "post-secondary" and "higher education institutions" in §7.4.

Response: The Board disagreed with this comment. It will be considered as part of the changes to be presented in April 2008.

Comment: ICUT comment stated that §7.4 does not address any standards that accrediting body must have in order to be recognized.

Response: The Board disagreed with this comment. It will be considered as part of the changes to §7.4 to be presented in April 2008.

Comment: CCST and ITT suggest a 30-day decision on applications in §7.4.

Response: The Board disagreed with this comment. It will be considered as part of the changes to §7.4 to be presented in April 2008.

Comment: CCST, ITT, and TPPF suggests "may recognize" be replaced in §7.4.

Response: The Board disagreed with this comment. The process will become clear with the April 2008 proposed changes to §7.4.

Comment: CCST and ITT suggest replacing "Board may recognize" with "Commissioner" in §7.4.

Response: The Board disagreed with this comment. It will review §7.4 as part of the April 2008 proposals.

Comment: SACS comment was to limit requests for information only to standards and policies for certification of authority to offer degrees in Texas in §7.4(1)(E).

Response: The Board disagreed with this comment. Board staff believes that the statement in §7.4(1)(E) is clear.

Comment: ABHES, ACCSCT, ACICS, CCST, and COE suggests adding the word "maintain" to continuing recognition to §7.4(2).

Response: The Board agreed with the suggestion to add the word "maintain" to §7.4(2).

Comment: SACS wanted "to participate" more clearly defined, suggested "observe" might be more appropriate in §7.4(2)(A).

Response: The Board disagreed with this comment. Board staff believes the statement is clear in §7.4(2)(A).

Comment: ABHES, ACCSCT, CCST, COE, and ITT suggest changing "10 days" to promptly in §7.4(2)(C).

Response: The Board disagreed with this comment. Board staff believes 10 days is reasonable as stated in §7.4(2)(C).

Comment: SACS suggested clarifying language on complaint notification in §7.4(2)(D).

Response: The Board agrees with the comment and language will be clarified in §7.4(2)(D).

Comment: SACS recommends that the Board not approve expansions of scope of accrediting authority in §7.4(2)(E).

Response: The Board disagreed with this recommendation to §7.4(2)(E). The Board has the authority.

Comment: ABHES, ACICS, CCST, COE, and VCA recommend deleting the word "fully" in §7.5(a)(1).

Response: The Board disagreed with this recommendation to delete the word "fully" in §7.5(a)(1) as currently shown in the rules.

Comment: CCST and VCA asks for a definition of "home campus" in §7.5(a)(1).

Response: The Board disagreed with the recommendation to define "home campus" in §7.5(a)(1), the meaning is clear.

Comment: ABHES, ACCSCT, BHS, CCST, COE, ITT, TPPF, and VCA suggest removing the names of recognized accreditors and replacing it with an on-line type list in §7.5(a)(1).

Response: The Board disagreed with this suggestion of an on-line type list in §7.5(a)(1). It will be included in the April 2008 review.

Comment: CCST suggests making consistent with the proposed changes to §7.5(a)(2).

Response: The Board disagreed with this suggestion of an unclear meaning in §7.5(a)(2). Board staff will follow up for April 2008 consideration.

Comment: ABHES, ACCSCT, ACICS, BHS, CCST, COE, and ITT proposed removing the reference to CHEA in §7.6(f)(1).

Response: The Board agreed with the removal of the reference to CHEA in §7.6(f)(1).

Comment: HEB requests deleting paragraph (5) in §7.7(c) concerning prohibiting accreditation solely on the basis of religious policies.

Response: The Board agreed with the suggestion to delete paragraph (5) in §7.7(c).

Comment: CCST suggests adding "other degrees generally considered as terminal" in §7.8(2)(B).

Response: The Board disagreed with the suggestion to §7.8(2)(B). Board staff will review for April 2008.

Comment: TPFF recommends adding "or hold a certificate of authority" in §7.8(13)(C)(iii).

Response: The Board agreed with the recommendation to §7.8(13)(C)(iii).

Comment: CCST suggests consideration that institutions typically withhold transcripts when a student has an outstanding financial obligation in §7.8(17)(C).

Response: The Board disagreed with the suggestion to withhold transcripts. Board staff will consider for April 2008.

Comment: ITT recommends removing SACS and replace it with "recognized accrediting agency" in §7.10(a)(5)(B)(i).

Response: The Board agreed with the recommendation for §7.10(a)(5)(B)(i).

Comment: CCST, ITT, VCA recommends changing 10 years to 2 years or none in §7.11(b).

Response: The Board disagreed with the recommendation in §7.11(b); will review in April 2008.

Comment: CCST recommends correcting the reference to §7.7 in §7.11(b)(2).

Response: The Board agreed with the recommendation for §7.11(b)(2).

Comment: CCST recommends correcting the reference to §7.8 in §7.13(b)(2).

Response: The Board agreed with the recommendation for §7.13(b)(2).

Comment: TNA comment that an alternate certificate appears to be minimal and significantly less rigorous than the standard certificate of authority in §7.22.

Response: The Board disagreed with the comments in §7.22; the current language allows the Board to make a fair determination.

Comment: ICUT suggests a distinction of what type of institution may apply for an alternate certificate of authority in §7.22.

Response: The Board disagreed with the comments in §7.22; the current language allows the Board to make a fair determination.

Comment: ICUT suggests that a surety instrument should have a minimum amount that is high enough to prevent anyone from making it a mere "cost of doing business" in §7.22.

Response: The Board disagreed with the comments in §7.22; the current language allows the Board to make a fair determination.

Comment: CCST, ITT suggests in §7.22(1)(F)(ii); 7.22(1)(F)(iii), and 7.22(1)(J)(ii), to limit tuition and fees to "prepaid and unearned".

Response: The Board disagreed with the comments in §7.22; the current language allows the Board to make a fair determination.

Comment: CCST and ITT comment states that reporting the percentage of students receiving financial aid and average student indebtedness is overly burdensome in §7.22(2)(G)(iii)(VI).

Response: The Board disagreed with the comment as information is needed for prospective students.

Comment: CCST and ITT suggest that §7.22(2)(G)(iii)(XI) is overly burdensome.

Response: The Board disagreed with the comment of §7.22(2)(G)(iii)(XI) - See above.

Comment: CCST and ITT suggest that §7.22(2)(G)(iii)(XII) is overly burdensome.

Response: The Board disagreed with the comment of §7.22(2)(G)(iii)(XII) - See above.

Comment: CCST and ITT suggest deletion of §7.22(2)(G)(iii)(V).

Response: The Board disagreed with the comment to §7.22(2)(G)(iii)(V); need more information.

Comment: CCST and ITT suggest deletion of §7.22(2)(G)(iii)(VII).

Response: The Board disagreed with the comment on §7.22(2)(G)(iii)(VII); need more information.

Comment: CCST and ITT suggest deletion of §7.22(2)(G)(iii)(IX).

Response: The Board disagreed with the comment to §7.22(2)(G)(iii)(IX); need more information.

Comment: CCST and ITT suggest deletion of §7.22(2)(G)(iii).

Response: The Board disagreed with the comment to §7.22(2)(G)(iii); need more information.

Comment: CCST and ITT suggest that in §7.22(2)(G)(i), if an institution is part of a larger organization, it might not have individual financial statements.

Response: The Board disagreed with the comment to §7.22(2)(G)(i); need more information.

Comment: CCST and ITT suggest deletion of §7.22(2)(G)(iii).

Response: The Board disagreed with the suggestion to delete §7.22(2)(G)(iii); need more information.

Comment: BON commented that changes may result in THECB's recognizing accrediting agencies which were not contemplated during adoption of HB 2426, the BON's Sunset Bill.

Response: Board Staff has met with BON and will work with them on April 2008 rules.

The amendments are adopted under the Texas Education Code, Title 3, Chapter 61, Subchapter G, §§61.301 - 61.321, as amended, which provides the Coordinating Board with the authority to permit Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas to award degrees and which also provides the Board with authority to regulate the granting of degrees by Private and Out-of-State Public Post-Secondary Educational Institutions operating in Texas.

§7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(2) Accrediting agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(3) Agent--A person employed by or representing a postsecondary educational institution within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who are without Texas.

(4) Alternative Certificate of Authority--A type of certificate of authority for approval of institutions of higher education, with

operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(5) Board--The Texas Higher Education Coordinating Board.

(6) Branch campus, extension center, or other off-campus unit--Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

(7) Certificate of authority--The Board's approval of institutions of higher education (other than exempt institutions), with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(8) Certificate of authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(9) Commissioner--The Commissioner of Higher Education.

(10) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(11) Educational or training establishment--An enterprise offering a course of instruction, education, or training that the establishment does not represent to be applicable to a degree.

(12) Exempt institution--An institution that is accredited by an agency recognized by the Board under §7.4 of this title (relating to Recognition of Accrediting Agencies) or an entity described in the Texas Education Code, §61.003(8).

(13) Fictitious degree--A counterfeit or forged degree or a degree that has been revoked.

(14) Fraudulent or substandard degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a certificate of authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.13 of this title (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.13 of this title, determines is not the equivalent of an accredited or authorized degree.

(15) Home campus--The headquarters of an institution, such location to be determined as a matter of fact by the Commissioner based upon consideration of information such as, but not limited to the following:

(A) where the institution is chartered;

(B) the site, campus or city where the principal or chief executive's offices are located;

(C) the site, campus or city where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

(16) Occasional courses--Courses offered not more than twice at any given location in the state.

(17) Out-of-state public institution of higher education--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(18) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(19) Private postsecondary educational institution or institution--An educational institution which:

(A) is not a public junior college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(20) Program or Program of study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(21) Protected term--The term "college," "university, "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate, or equivalents.

(22) Recognized accrediting agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(23) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(24) The subchapter--Texas Education Code, Title 3, Chapter 61, Subchapter G, as amended, having an effective date of June 21, 1975.

§7.4. Recognition of Accrediting Agencies.

The Texas Higher Education Coordinating Board may recognize accrediting agencies with a commitment to academic quality and student

achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an institutional accrediting agency authorized to accredit educational institutions that offer the associate degree or higher;

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education;

(C) Accredits higher education institutions that have legal authority to confer higher education degrees;

(D) Requires an onsite review by a visiting team as part of initial and continuing accreditation of educational institutions;

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board; and

(F) Has sufficient resources to carry out its functions.

(2) Continuing Recognition. To receive and maintain continuing recognition from the Board, the accrediting agency must:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews;

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time;

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution accredited by it where accrediting agency took official action on issues of non-compliance and the disposition of those complaints; and

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority.

§7.5. Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization.

(a) The provisions of this subchapter do not apply to:

(1) The home campus of an institution which is fully accredited by a recognized accrediting agency. For purposes of the exemption, the Board currently recognizes the following accrediting agencies: the Commission on Higher Education, Middle States Association of Colleges and Schools; the Commission on Institutions of Higher Education, New England Association of Schools and Colleges; the Commission on Institutions of Higher Education, North Central Association of Colleges and Schools; the Northwest Commission on Colleges and Universities, the Commission on Colleges, Southern Association of Colleges and Schools; the Accrediting Commission for Community and Junior Colleges and Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges; the Association of Biblical Higher Education (undergraduate only); and the Association of Theological Schools in the United States and Canada.

(2) A branch campus, extension center, or other off-campus unit operated by a private or independent institution of higher education as defined by Texas Education Code, §61.003.

(3) An institution or degree program that has received approval by an agency of the State of Texas authorizing the graduates of the institution to take a professional or vocational state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) The exemptions provided by subsection (a) of this section apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the State of Texas, the exemption does not apply.

(c) The Commissioner may issue a certificate of authorization to grant degrees to an exempt institution, upon the institution's application and demonstration that it qualifies for an exemption under subsection (a)(1) of this section, as limited by subsection (b) of this section.

(d) A new institution may not presume exempt status and offer to award degrees or courses leading to degrees until it has applied for and been granted a certificate of authorization by the Commissioner.

(e) An exempt institution continues in that status only so long as it maintains accreditation by a recognized accrediting agency or otherwise meets the provisions of subsection (a) of this section.

(f) Revocation of an exemption.

(1) If the Commissioner receives credible evidence that an institution is no longer qualified for an exemption and after performing an investigation as deemed appropriate, he shall notify the institution that its exempt status is revoked, and that the institution is subject to the requirements of Chapter 61 of the Texas Education Code, and of this subchapter.

(2) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for an exemption.

(3) Within 10 days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption.

(4) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(5) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.6. Administrative Procedures Related to Certification of Nonexempt Institutions.

(a) The Board may issue to a nonexempt institution a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards established herein.

(b) Certification Advisory Council.

(1) The Board shall appoint a certification advisory council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, to assist the Commissioner in the examination of individual applications for certificates of authority, and to perform other duties related to certification that the Board finds to be appropriate.

(2) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private institutions of higher education in Texas.

(3) The members shall be appointed for two year fixed and staggered terms.

(c) Fees.

(1) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for certificates of authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an onsite review is conducted. For an additional fee not to exceed $500, the Board shall provide review of applications within 120 days.

(2) Each biennium, the Commissioner shall also set the fees for amendments to certificates of authority; initial reviews of branch campuses or extension centers; site visits to branch campuses or extension centers; and certificates of registration of agents.

(3) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(d) Board's review of applications.

(1) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, may visit the institution and conduct an onsite survey to evaluate the application for a certificate of authority. The visiting team will be composed of people who have experience and knowledge relating to institutions of higher education.

(2) The visiting team will prepare a written report of its findings regarding the institution's ability to meet the standards for a certificate of authority. This report will be provided to the applicant institution, which shall have 30 days within which to submit a written response.

(3) The certification advisory council will review the findings of the visiting team and the response of the institution and submit to the Commissioner a recommendation concerning the application.

(4) The Commissioner will forward to the Board the recommendation of the advisory council with his endorsement or with an alternate recommendation.

(5) Upon approval of the Board to award a certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state, at a minimum, that the institution is authorized to grant certain degrees, the issue date, and the period for which the certificate is valid.

(6) If the Board denies an institution's application for a certificate of authority, or for renewal of its certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

(A) The institution will not be eligible to reapply for a period of 180 days.

(B) Until the certificate of authority is reinstated, the institution may not grant degrees or receive payments from students for courses which may be applicable toward a degree.

(C) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(D) The period of time during which the institution does not hold a certificate of authority shall not be counted against the 8-year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in §7.7(c)(3) of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments); the time period begins to run again upon reinstatement.

(7) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(e) Terms and limitations of a certificate of authority.

(1) The certificate of authority to grant degrees is valid for a period of two years from the date of issuance.

(2) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in §7.7(c)(3) of this title. Therefore, the institution awarded a certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

§7.7. Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.

(a) Eligibility to apply. The Board will accept applications for a certificate of authority only from those institutions:

(1) proposing to offer a degree or credit courses alleged to be applicable to a degree; and

(2) which have been in operation for a minimum of two years. As a minimum, "in operation" means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a certificate of authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of higher education institutions, which is:

(A) In a form acceptable to the Board; and

(B) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Authority ceasing operation, and provides evidence

satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(b) Application for certificate of authority.

(1) Institutions seeking a certificate of authority are urged to contact the Board's Institutional Certification Office before filing a formal application.

(2) Applications must be submitted with an original and four copies and accompanied by the fee described in §7.6(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(3) Documentary evidence of compliance with subsection (a)(2) of this section must be filed with the application.

(4) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the certification advisory council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a certificate of authority.

(c) Renewal of certificate of authority.

(1) At least 180 days, but no more than 210 days, prior to the expiration of the current certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in §7.6(c) of this title.

(2) The application for renewal of the certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.

(3) An institution may be granted consecutive certificates of authority for no longer than eight years. Absent sufficient cause, at the end of the eight years, the institution must be accredited by a recognized accrediting agency.

(4) Subject to the restrictions of paragraph (3) of this subsection, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

(d) Amendments to a certificate of authority.

(1) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within 120 days.

(2) Applications for amendment shall be accompanied by the fee described in §7.6(c) of this title.

(3) Unless the Board finds that the new program of study does not meets the required standards, the Board shall amend the institution's certificate accordingly.

(e) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this title (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(1) the other institution is named in such representation, and is accredited by an accrediting agency listed in §7.5(a)(1) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization) or has a certificate of authority;

(2) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(3) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' Boards of trustees in writing, and is filed with the Board.

(f) Duty to Report.

(1) Institutions holding a certificate of authority will be required to:

(A) furnish a list of their agents to the Board; and

(B) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board.

(2) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which the certificate was granted. For purposes of this provision, administrative personnel consists only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger notification.

(g) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within 45 days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.8. Standards for Certificates of Authority.

The decision to grant a certificate of authority to an institution will be based on its demonstrated compliance with the following standards. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by regional and specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs, such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. The institution shall demonstrate compliance with

the Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college school or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned doctorate awarded by an institution accredited by an agency recognized by the Board or from a foreign institution demonstrated to be equivalent to an accredited institution, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governing Board. The institution shall have a governing board consisting of at least three members. The institution's governing board shall be an active policy-making body, focused on promoting the mission of the institution, and shall exercise its authority to ensure that the mission of the institution is carried out. Members of the Board shall represent the interests of the institution's constituencies of faculty, students, and supporters.

(4) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the governing Board of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration, (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification and by assessing the academic skills of each entering student with an instrument approved in §4.56 of this title (relating to Assessment Instruments), and otherwise complying with §§4.51 - 4.59 of this title (relating to the Texas Success Initiative). If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(9) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member teaching in an academic associate or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member teaching technical or vocational courses in a vocational associate degree program, or technical and vocational courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency or at least three years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member teaching general education courses in a vocational associate degree program shall have at least a baccalaureate's degree from an institution accredited by a recognized accrediting agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. The justification for such appointment shall be fully documented. The Coordinating Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(10) Faculty Size. There shall be a sufficient number of faculty holding teaching appointments who are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one full-time faculty member in each program. At the graduate level, there shall be at least two full-time faculty members in each program.

(11) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(12) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed 25 percent of all courses.

(B) An academic associate degree must consist of at least 60 semester credit hours or 90 quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least 120 semester credit hours or 180 quarter credit hours and not more than 139 semester credit hours or 208 quarter credit hours. A master's degree must consist of at least 30 semester credit hours or 45 quarter credit hours and not more than 36 semester credit hours or 54 quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(13) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least 20 semester credit hours or 30 quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least 25 percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency or hold a certificate of authority.

(14) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the advanced placement program (AP) or the college level examination program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than 15 semester credit hours or 23 quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(15) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(16) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(17) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(18) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog containing, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) a statement of Texas Success Initiative requirements;

(xvi) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvii) any disclosures specified by the Board or defined in Board rules. If the catalog is made available in only an electronic format, the institution must preserve at least one printed copy thereof for at least ten years.

(C) The cancellation and refund policy of the institution shall be fair and shall be applied equitably.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program.

(E) Any special requirements, or limitations of program offerings, for the students at the Texas branch must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(19) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(20) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(21) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

§7.10. Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units.

(a) Off-Campus Operations.

(1) A nonexempt institution may not operate a branch campus.

(2) A private postsecondary institution must be approved by the Board to operate a branch campus, extension center, or other off-campus unit in Texas, except as noted in §7.5(a)(2) of this title (relating to Exemptions, Revocation of Exemptions and Certificates of Authorization).

(3) An institution with off-campus offerings that approach the scale of a branch campus, extension center, or other off-campus unit, as defined in §7.3 of this title (relating to Definitions), must submit to the Board a description of its plans, including such information as requested on an application form, to be furnished by the Board upon request.

(4) On receipt of an acceptable application and the application fee for initial review of a branch campus or extension center listed in §7.6(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions), the Commissioner may authorize the institution to begin operations at the branch campus, on a temporary basis, pending a formal review and evaluation.

(5) Formal Review and Evaluation.

(A) Accreditor's on-site review and evaluation. If the applicant institution is accredited by a recognized accrediting agency, it shall inform its recognized accreditor of the institution's temporary authorization from the Board to begin operations, as provided in paragraph (4) of this subsection, so that the accreditor may conduct a site visit at the branch campus or extension center to verify compliance with that accreditor's criteria for branch campuses.

(i) An exempt institution shall submit to the Board the report of the recognized accreditor's review and evaluation.

(ii) After examining the report of the recognized accreditor concerning an exempt institution, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary authorization of the branch campus or extension center.

(iii) Final approval by the accreditor of an exempt institution must be made within two years of the initial approval by the Commissioner, or the Board's temporary authorization will lapse.

(iv) If the accreditor denies approval of an exempt institution, the Board's temporary authorization shall immediately expire.

(B) Board's on-site review and evaluation. If the accreditor does not conduct an on-site review and evaluation of the branch campus or extension center or the institution is non-exempt, the Board will conduct an office review and, if deemed necessary, an on-site review and evaluation to determine whether the branch complies with the Board's standards of operations.

(i) The Board may invite the recognized accrediting agency for the institution to provide representation, to accompany the visiting team, and to supply comments.

(ii) If an on-site review is conducted, the institution shall be assessed the fee for an on-site survey to a branch campus or extension center, as provided in §7.6(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(iii) The institution shall be sent the report of the Board's review and evaluation and shall have 30 days to submit a written response to the report.

(iv) After examining the report of review and evaluation and the institution's written response, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary approval of the branch campus or extension center.

(6) The Board requires reviews, including site visits, of an exempt branch campus or extension center according to the schedule used for accreditation of the main campus by the recognized accreditor. The review will be conducted in the same manner as described in paragraph (5) of this subsection. The Commissioner may deny continuing approval of any branch campus or extension site which fails to maintain the conditions and standards on which approval was based.

(7) In the event of any adverse determination made under the authority of this section by the Commissioner, the institution shall receive notice of the determination, and shall be given the reasons for the denial in writing.

(8) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(9) Any change in location, ownership, governance, administrative personnel, faculty, or facilities at the of the branch campus or extension center, or any other changes relevant to the Board's standards for off-campus operations at exempt institutions, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which approval to operate a branch campus, extension center, or other off-campus unit was granted. For purposes of this provision, administrative personnel consists only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger notification.

(b) Standards for Off-Campus Operations at Exempt Institutions.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable laws of the state in which the institution is located, and with all Texas laws affecting its operations in Texas, including the rules and regulations adopted to administer those laws. The institution shall demonstrate that it holds a certificate of authority or is exempt from the requirement to hold a certificate of authority to grant degrees by providing documentation from an accreditor recognized by the Board demonstrating that the institution is currently accredited.

(2) Administration of the Branch Campus. There shall be an appropriate and effective administrative structure between the main campus and the off-campus unit. The character, education, and experience in higher education of the local administrators shall be such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study. Local faculty must have the same degree of separation and independence from the administration that faculty on the main campus enjoy.

(3) Financial Resources and Stability. The institution shall have a reasonable budget for the off-campus unit and must demonstrate adequate reserves available to the off-campus unit to meet its responsibilities to its Texas students.

(4) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(5) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification and by assessing the academic skills of each entering student with an instrument approved in §4.56 of this title (relating to Assessment Instruments), and otherwise complying with §§4.51- 4.59 of this title (relating to the Texas Success Initiative). If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(6) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member teaching in an academic associate or baccalaureate level degree program, except for technical or vocational courses, shall have at least a master's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member teaching technical or vocational courses in a vocational associate degree program, or technical and vocational courses that academic associate or baccalaureate students may chose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency or at least three years of direct or closely related experience in the discipline being taught.

(C) Each faculty member teaching general education courses in a vocational associate degree program shall have at least a baccalaureate's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Graduate level degree programs shall be taught by faculty holding doctorates, or other degrees, generally recognized as the highest attainable in the discipline, or closely related discipline, being taught, from institutions accredited by a recognized agency.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. The justification for such appointment shall be fully documented. The Coordinating Board may evaluate the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(7) Faculty Size. There shall be a sufficient number of faculty holding teaching appointments who are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. Full time faculty on the main campus serving in merely an assessment role at the off-campus unit do not, taken alone, satisfy the standard. There shall be at least one faculty member with a teaching assignment for each program at the off-campus unit.

(8) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion; tenure; and non-renewal or termination of appointments, including for cause, shall be clearly published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document that shall be given to that faculty member with a copy to be retained by the institution. If there are separate provisions of employment for Texas branch faculty, those differences must be explicitly stated to faculty in writing. If the differences are substantial, there should be a separate faculty handbook for the Texas faculty.

(9) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed 25 percent of all courses.

(B) An academic associate degree must consist of at least 60 semester credit hours or 90 quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least 120 semester credit hours or 180 quarter credit hours and not more than 139 semester credit hours or 208 quarter credit hours. A master's degree must consist of at least 30 semester credit hours or 45 quarter credit hours and not more than 36 semester credit hours or 54 quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(10) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least 20 semester credit hours or 30 quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least 25 percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution;

(iii) the providing institution shall be accredited by a recognized accrediting agency.

(11) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution, or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the advanced placement program (AP) or the college level examination program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than 15 semester credit hours or 23 quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(12) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(13) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(14) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(15) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) a statement of Texas Success Initiative requirements;

(xvi) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvii) any disclosures specified by the Board or defined in Board rules.

(C) The cancellation and refund policy of the institution shall be fair and shall be applied equitably.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and job placement rate by program.

(E) Any special requirements, or limitations of program offerings, for the students at the Texas branch must be made explicit in writing or through electronic publication. This may be accomplished by either a separate section in the catalog or a brochure or other printed or electronic document separate from the catalog. However, if a brochure or separated document is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(16) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(17) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied to each student upon enrollment in the institution.

(18) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

§7.11. Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

(a) Occasional Courses. A private institution may offer occasional degree-credit courses at off-campus sites in Texas without prior approval of the Board. Nonexempt private institutions must submit an annual report to the Board listing any new such courses added that year.

(b) Changes of Level for Exempt Private Institutions. An institution which is exempt by accreditation from a recognized agency and which has established stability by being so accredited for the previous ten years and which wishes to expand to a different degree level not covered by its existing accreditation shall, by submission of a letter to the Commissioner outlining the degree or degrees to be offered at the higher level, be granted state authorization to seek accreditation at the higher level with the recognized accrediting agency. If the recognized accrediting agency does not extend accreditation to the higher level or if the institution has not been accredited for ten or more years, the institution may seek a certificate of authority under the procedures listed in §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments).

(c) Out-of-State Public Institutions of Higher Education. An out-of-state public institution of higher education as defined in §7.3 of this title (relating to Definitions) must have approval of the Board to offer a course or a grouping of courses within the State of Texas (Texas Education Code, Chapter 61, Subchapter H). The institution must submit a description of its plans prior to offering courses, including information requested on an application form furnished by the Board. The application will be subject to review under the procedures listed in §7.6 of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

§7.13. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

(a) A person holding a degree from an institution that is not eligible to receive a certificate of authority may request a letter from the Board confirming that the institution is not eligible for a certificate of authority and providing the procedures for review and approval of the degree for use in Texas. The Board shall send a copy of the letter to the institution.

(b) Procedures for review and approval.

(1) An institution that confers a degree described in §7.3(11) of this title (relating to Definitions), may request that the Board review and approve for use in Texas that degree, as provided in those sections. The person or institution shall submit the request on a form created by the Board.

(2) The Commissioner shall apply the standards provided in §7.8 of this title (relating to Standards for Certificates of Authority) to determine if the degrees awarded by a person or institution are equivalent to degrees granted by a private postsecondary educational institution or other person holding a certificate of authority from the Board.

(3) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, shall visit the institution and conduct an on-site survey to evaluate the application for review and approval. The visiting team shall be composed of people who have experience on the faculties or staffs of accredited institutions and who possess knowledge of accreditation standards.

(4) The Board shall charge the person or institution petitioning for review and approval a fee equal to the application fee for a certificate of authority or the actual cost of conducting the review, including travel expenses and cost of consultant fees, whichever is greater.

§7.14. Information Provided to Protect Public from Fraudulent, Substandard, or Fictitious Degrees.

(a) The Board shall disseminate the following information through the Board's Internet website:

(1) the accreditation status or the status regarding authorization or approval under this subchapter, to the extent known by the Board, of each exempt institution operating in the state, each postsecondary educational institution or other person that is regulated under §§7.1 - 7.11 of this title or for which a determination is made under §7.11 of this title (relating to Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions), and any institution offering fraudulent or substandard degrees, including:

(A) the name of each educational institution accredited, authorized, or approved to offer or grant degrees in this state;

(B) the name of each educational institution whose degrees the Board has determined may not be legally used in this state; and

(C) the name of each educational institution that the Board has determined to be operating in this state in violation of this subchapter; and

(2) any other information considered by the Commissioner to be useful to protect the public from fraudulent, substandard, or fictitious degrees.

(b) the Board shall utilize such usual and customary sources for determining the accreditation status of institutions; guides to international education; the Board's knowledge of legal actions taken against institutions, either by an agency of the state of Texas or agencies of other states or nations; or civil actions against institutions brought by governmental agencies or individuals.

(c) In determining the legitimacy of institutions headquartered or operating outside of Texas, the Board may determine if the state or nation in which the person or institution is headquartered, operates, or holds legal authorization to operate has standards and practices that are as rigorous as those of the Board's. A determination that a particular state or nation's standards or practices are not appropriately rigorous shall be sufficient reason to disapprove the use of the degrees of a person or institution.

§7.15. Prohibitions.

(a) A person or institution may not:

(1) Grant, award, or offer to award a degree on behalf of a nonexempt institution unless the institution has been issued a certificate of authority, including an alternative certificate of authority, to grant the degree by the Board;

(2) Represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified under §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments) or §7.24 of this title (relating to Administrative Procedures Relating to Alternative Certification of Nonexempt Institutions), and approved by the Board, or represent that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term;

(3) Award or offer to award an honorary degree on behalf of a private postsecondary educational institution subject to the provisions of the subchapter, unless the institution has been awarded a certificate of authority to award such a degree, or solicits another person to seek or accept an honorary degree and, further, unless the degree shall plainly state on its face that it is honorary;

(4) Use a protected term in the official name or title of a nonexempt private postsecondary educational institution or describe an institution using any of these terms or a term having a similar meaning, except as authorized by the Board, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(5) Use a protected term in the official name or title of an educational or training establishment or describe an institution using any of these terms or a term having a similar meaning, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(6) Act as an agent who solicits students for enrollment in a private postsecondary educational institution subject to the provisions of the subchapter without a certificate of registration, if required by this title.

(7) Use or claim to hold a degree that the person knows is a fraudulent or substandard degree or is a fictitious degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, a compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(b) Institutions Located on Federal Land in Texas. An institution that is operating on land in Texas over which the federal government has exclusive jurisdiction shall limit the recruitment of students and advertising of the institution or its programs or courses to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land. The institution shall not enlist any agent, representative, or institution to recruit or to advertise by any medium, the institution or its programs or courses except on the federal land.

(c) A violation of this subsection may constitute a violation of the Texas Penal Code, §32.52. An offense under subsection (a)(1) - (6) of this section may be a Class A misdemeanor and an offense under subsection (a)(7) of this section may be a Class B misdemeanor.

§7.22. Alternative Certification of Authority.

In lieu of the standard certification of authority requirements for institutions and their agents in §§7.8, 7.9, and 7.11 of this title, an institution may obtain an alternative certification of authority to issue degrees as provided by this section.

(1) Surety Instrument Requirement

(A) At the time application is made for an alternative certificate of authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas each shall file one bond or surety alternative covering the school and its agents.

(B) A school whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students shall be noncompliant with these sections, and, if, after a period of time determined by the Board from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its alternative certificate of authority.

(C) The amount of the bond or other allowable surety instrument submitted to the Board with an application for an alternative certificate of authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school, not including the Title IV portion of tuition and fees, for a period or term during the applicable school year for which programs of instruction are offered including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(D) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than five thousand dollars.

(E) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or alternative.

(F) In order to be approved by the Board, a surety bond must be:

(i) Executed by the applicant and by a surety company authorized to do business in Texas;

(ii) In a form acceptable to the Board;

(iii) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an Alternative Certificate of Authority ceasing operation; and

(iv) An original bond.

(G) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(i) Is in a form acceptable to the Board;

(ii) Is executed by the applicant; and

(iii) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(H) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(i) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(ii) Is either:

(I) Payable to the Board;

(II) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(III) In the case of a nonnegotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(I) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation.

(J) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of higher education institutions, which:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(K) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(i) If the application is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate Board.

(ii) If the applicant is a limited liability corporation the document must be executed by the members.

(iii) If the applicant is a partnership, the document must be executed by all general partners.

(iv) If the applicant is an individual, the document must be signed by the individual.

(v) If the applicant is a state agency, the document must be signed by the Director of that Department.

(vi) If the applicant is a local government, the document must be signed by the mayor or Board president.

(L) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single school.

(M) A school applying for an alternative certificate of authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years.

(2) Self-certification Application and Statement. An institution seeking an alternative certificate of authority shall submit to the Board a completed application and a completed checklist, signed and dated, acknowledging compliance with certification criteria set forth in this section, along with a notarized attestation statement signed by the chief executive officer or equivalent. The application form shall contain:

(A) The name and address of the institution and its purpose;

(B) The names of the sponsors or owners of the institution;

(C) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

(D) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(E) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(F) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(G) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process. The institution must certify that it maintains the following items and that they are readily accessible to students and the public, including on the institution's internet website, although they need not be submitted to the Board unless specifically required herein or requested by the Board:

(i) Institutional Description. The postsecondary institution shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

(I) The history and development of the postsecondary institution;

(II) An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary institution;

(III) The purpose of the postsecondary institution, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;

(IV) A list of the principal locations in Texas at which the postsecondary institution offers courses and a list of the degree programs currently offered or planned to be offered by the institution and/or a description of the postsecondary institution's online, distance and telecommunications activities;

(V) Name of program director or director of education credentials; and

(VI) The name, location, and address of the main campus, branch or site operating in Texas.

(ii) Student Profile. The postsecondary institution shall have a clear, accurate, and comprehensive written description of its student body profile. This description must be updated at least annually and made available to the public upon request. The description minimally shall include the following items:

(I) For each Texas location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students claiming Texas residence who were enrolled in each program offered;

(II) For each Texas location, the total number of students that completed/graduated from each program offered by the institution as of the end of the last academic year; and

(III) Demographic information on the composition of the student body.

(iii) Recruitment, Admissions, Courses, Student Complaints. The postsecondary institution shall have, maintain, and provide to all applicants a policy document, catalog, bulletin, brochure, or electronic media accurately defining the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary institution that are relevant to the institution's admissions standards. In addition, the document shall include:

(I) A broad description, including academic career-technical objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course, credential degree completion, course descriptions, and a statement of the type of credential awarded;

(II) The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates/diplomas;

(III) The academic or course work schedule for the period covered by the publication;

(IV) The criteria for transfer credit where applicable;

(V) A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible;

(VI) The description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation;

(VII) The institution's refund policy for tuition and fees. The institution shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of nonrefundable application fees remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program. The institution must have a written policy regarding the refund of tuition and fees after the start of the program, including the length of time in which refunds will be completed;

(VIII) A statement that accurately details the type and amount of career advising and placement services offered by the school;

(IX) Student retention, persistence, graduation, transfer, and time-to-degree or program completion rates;

(X) Students' rights, privileges, and responsibilities; and, the established grievance process of the institution, which shall indicate that students should follow this process and may contact

the Board and/or Attorney General to file a complaint about the institution if necessary;

(XI) Where students may find on the institution's website the results of student satisfaction surveys by course and instructor, student comments on the satisfaction surveys, and grade distributions by course and program; and whether this information is externally-validated and the name and address of the validating entity; and

(XII) Where students may find on the institution's website outcome data such as graduation rate, post-graduate employment data, post-graduate scores on regulatory, licensure or other external exams, and results from post-graduate employer satisfaction and/or employer satisfaction surveys; and whether this information is externally-validated and the name and address of the validating entity.

(iv) Student Records. The postsecondary institution shall maintain records on all enrolled students. At a minimum, these records shall include:

(I) Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary institution's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary institution. Admissions records must be maintained for a minimum of three years after the student's last date of attendance.

(II) A transcript of the student's academic or course work at the institution, which shall be retained permanently in either hard copy forms or in an electronic database with backup.

(III) A record of student academic or course progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current academic status.

(IV) A record of all financial transactions between each individual student and the institution including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance.

(V) A written, binding agreement transacted with another institution or records-maintenance organization with which the school is not corporately connected for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of school closure or revocation of certification in Texas.

(v) Curriculum, Total Credits, General Education, Satisfactory Progress, Institutional Effectiveness and Systematic Program of Review. The institution must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Each evaluation of institutional or program effectiveness must be completed on a regular basis and must include, but not be limited to:

(I) An explanation of how each program is consistent with the mission of the institution;

(II) The number of hours of instruction in each subject and total number of hours required for course, credential and/or degree completion, course descriptions, and a statement of the type of credential awarded;

(III) The amount and type of general education required in a degree program;

(IV) A detailed and clear explanation of the student outcomes expected by each program, including the skills, tools, knowledge and competencies students are expected to learn;

(V) An explanation for what constitutes satisfactory progress by students in each program;

(VI) A process for evaluating the effectiveness of each program in achieving the desired outcomes, including the use, where applicable, of student outcome data such as graduation rate, post-graduate employment data, post-graduate scores on regulatory, licensure or other external exams, results from post-graduate and/or employer satisfaction surveys;

(VII) The externally-validated, competency-based method that is reliable and comparable with other institutions or programs of the same type that is used to measure student outcomes for each program offered by the institution;

(VIII) The name and address of the entity or entities conducting the external review of each program;

(IX) That the institution maintains and makes readily available to all applicants, all enrolled students and the public the results of all external reviews of each program; and

(X) Documented use of the results of these reviews to improve the programs offered by the institution.

(vi) Faculty Qualifications. The postsecondary institution shall have a clear, accurate, and comprehensive written statement regarding the qualifications of the institution's administrators and faculty, which shall be available to the public upon request. The statement minimally shall include the following items:

(I) The names of all administrators and faculty and their qualifications, including technical and general education faculty;

(II) The specific courses taught by each administrator and faculty member;

(III) The total number of students taught by each faculty member in the previous academic year or term;

(IV) The policy and procedures by which administrators and faculty receive performance reviews and are compensated, including whether the institution uses student evaluations of faculty; and

(V) The results from student satisfaction surveys of each faculty member.

(vii) Management and Financial Capacity and Information Sharing. The institution must maintain records that demonstrate it is financially sound; exercises proper management, financial controls and business practices; and can fulfill its commitments for education or training. The institution's financial resources should be characterized by stability, which indicates the institution is capable of maintaining operational continuity for an extended period of time.

(I) Institutions shall make publicly available the results of an annual independently audited, reviewed or compiled financial statement.

(II) In reviewing these results, the Board shall use the United States Department of Education Financial Ratio (composite score). The United States Department of Education composite score range is -1.0 to 3.0. Institutions with a score of 1.5 to 3.0 meet fully the stability requirement; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit by the Board.

(III) The institution shall have a written policy on the sharing of information with state and federal regulatory agencies.

(viii) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instruction, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resource development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(ix) Agents. Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this title (relating to Definitions) and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(x) Continuity. Institutions shall certify either that they have operational continuity of two years or more by indicating that either at least one of their core institutional academic components, such as their chief academic officer or a founding faculty member, has delivered or overseen the delivery of higher education services within or outside of Texas for at least the last two years; or that the applicant institution incorporated two or more years ago whether in Texas or another jurisdiction.

(xi) Off-Campus Courses and Branch Campuses. An institution holding an alternative certificate of authority may operate branch campuses and offer degree-credit courses at off-campus sites without prior approval of the Board, provided the requirements of this section are met.

§7.23. Alternative Certificate of Authority--Eligibility, Applications, and Renewals.

This section shall apply to institutions holding or seeking an alternative certification of authority in lieu of §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments).

(1) Eligibility to apply. The Board will accept applications for an alternative certificate of authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(2) Application for alternative certificate of authority.

(A) Institutions seeking an alternative certificate of authority are urged to contact the Board's Institutional Certification Office before filing a formal application.

(B) Applications must be submitted with an original and four copies and accompanied by the fee described in §7.24(2)(A) of this title (relating to Administrative Procedures Related to Alternative Certification of Nonexempt Institutions).

(3) Renewal of certificate of authority.

(A) At least 180 days, but no more than 210 days, prior to the expiration of the current alternative certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in §7.24(2)(A) of this title .

(B) The application for renewal of the alternative certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application.

(4) An institution may be granted consecutive alternative certificates of authority for no longer than 12 years. Absent sufficient cause, at the end of 12 years, the institution must be accredited by a recognized accrediting agency. Under exceptional circumstances, an institution indicating that it has enhanced the educational and workforce preparation levels of its students and submits a notarized letter stating that accreditation requirements would increase costs, limit innovation, or otherwise impose hardship shall be deemed to have shown sufficient cause and the Board shall renew its certification.

(5) The Board shall renew the alternative certificate of authority if it finds that the institution has maintained all requisite standards as set forth in §7.8 of this title (relating to Standards for Certificates of Authority), and is making progress toward accreditation.

(6) The Board shall consider applications for alternative certificates of authority without regard to the religious affiliation, if any, of the applicant.

(7) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this title (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(A) the other institution is named in such representation, and is accredited by an accrediting agency listed in §7.5(a)(1) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization) or holds a certificate of authority or alternative certificate of authority;

(B) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(C) the written agreement between the institution subject to these rules and the other institution is approved by both institutions' governing boards in writing and by their accrediting agencies, if any, and is filed with the Board.

(8) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within 45 days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.24. Administrative Procedures Relating to Alternative Certification of Nonexempt Institutions.

This section shall apply to institutions holding or seeking an alternative certification of authority in lieu of §7.6 (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(1) The Board shall issue to a nonexempt institution an alternative certificate of authority to grant degrees and enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards established heretofore and has submitted a valid surety instrument, completed application, self-certification checklist, and notarized attestation statement as described in §7.21 of this title (relating to Deceptive Trade Practices Act) unless the Board has found by a preponderance of the evidence that there is one or

more material false statements in these submissions. The Board shall make this determination within 90 days.

(2) Fees.

(A) Alternative Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for alternative certificates of authority, which shall be equal to the average cost of evaluating the applications. If the Board conducts a site visit at a main campus or a branch campus, the Board may also charge the institution with the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members.

(B) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(3) Board's review of applications.

(A) Upon approval of the Board to award an alternative certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state at minimum the issue date and the period for which the certificate is valid.

(B) If the Board denies an institution's application for an alternative certificate of authority, or for renewal of its alternative certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

(C) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(D) Terms and limitations of an alternative certificate of authority.

(E) The alternative certificate of authority to grant degrees is valid for a period of two years from the date of issuance.

(F) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in §7.7(c)(3) of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments). An institution awarded an alternative certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the alternative certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(4) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for alternative certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which the certificate was granted. An institution may choose to comply with this provision by posting a notice of the change on its website and, by fax, letter, phone, or email, notifying the Board that such notice has been so posted. For purposes of this provision:

(A) a change in administrative personnel that must be reported occurs only if an individual in a executive leadership role that involves setting institutional policies vacates that position;

(B) a change in facilities that must be reported occurs only if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported; and

(C) changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of faculty collectively in an area (an academic or vocational department) shall be reported.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800682
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3005

The Texas Education Agency (TEA) adopts an amendment to §101.3005, concerning implementation of testing program. The amendment is adopted without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9507) and will not be republished. The section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The adopted amendment incorporates records retention requirements related to the security of assessment instruments, in accordance with Senate Bill (SB) 1031, 80th Texas Legislature, 2007.

SB 1031, 80th Texas Legislature, 2007, amended the TEC, Chapter 39, Subchapter B, incorporating additional statutes relating to public school accountability and the administration of certain assessment instruments in public schools. The TEC, §39.0301, added by SB 1031, authorizes the commissioner to establish record retention requirements for school district records related to the security of assessment instruments.

The adopted amendment to 19 TAC §101.3005 implements the legislative requirement by incorporating reference to security in subsection (a) and adding new subsection (d) to specify in rule the retention requirement of five years for school districts to maintain records related to the security of assessment instru-

ments. A non-substantive change is also made in subsection (b)(2).

The TEA has determined, in accordance with Texas Government Code, §2006.002, that the adopted amendment will have no adverse economic effect to small business or microbusiness.

The public comment period on the proposal began December 21, 2007, and ended January 20, 2008. No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Education Code, §39.0301(a)(2), as added by SB 1031, 80th Texas Legislature, 2007, which authorizes the commissioner to establish record retention requirements for school district records related to the security of assessment instruments.

The amendment implements the Texas Education Code, §39.0301(a)(2).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800779
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: February 28, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.7

The Texas State Board of Dental Examiners (Board) adopts the amendment of §103.7, regarding the reinstatement of a retired Texas dental hygiene license. The amendment is adopted without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9508) and will not be republished.

The amendment is adopted to update the requirement that a retired hygienist who has not actively practiced for at least two years complete twenty-four, rather than twelve, hours of continuing education in the year preceding the application of the Texas license holder for reinstatement. This is already the standard for retired dentists.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800678
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0972

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.63

The Texas State Board of Dental Examiners (Board) adopts the amendment of §107.63. The adopted amendment eliminates the basis for complainant appeals. The amendment is adopted without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9509) and will not be republished.

The amendment is adopted to delete an appeals procedure that allowed third parties to request a review of cases closed pursuant to staff action.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800675
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0972

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SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.103

The Texas State Board of Dental Examiners (Board) adopts the amendment of §107.103. The adopted amendment eliminates the basis for complainant appeals. The amendment is adopted without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9509) and will not be republished.

The amendment is adopted to delete an appeals procedure that allowed third parties to request a review of cases closed pursuant to staff action.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101 - 125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0972

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS

SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.1, 871.3, 871.6, 871.11, 871.12, 871.14

The Advisory Board of Athletic Trainers (board) adopts amendments to §§871.1, 871.3, 871.6, 871.11, 871.12, and 871.14, concerning the licensure and regulation of athletic trainers. The amendment to §871.14 is adopted with changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5293). Sections 871.1, 871.3, 871.6, 871.11, and 871.12 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

In accordance with Occupations Code, Chapter 451, the rules are being amended to establish a complaints committee; incorporate the committee into the complaint process and establish procedures for complaint resolution. Additionally, the amendments delete the Administrative Services Committee; remove references to licenses issued for one year; clarify late renewal without penalty for military personnel who are on active duty; reduce the number of allowable continuing education credits for serving as a skills examiner; and accurately reflect the continuing education audit process.

SECTION-BY-SECTION SUMMARY

The amendment to §871.1 removes the reference to the Administrative Services Committee. The amendment to §871.3 removes the reference to the Administrative Services Committee and establishes the Complaints Committee as a committee of the board.

Amendments to §871.6 remove out-dated fees that are no longer valid due to two-year license issuance.

Amendments to §871.11 remove obsolete language that is no longer valid due to two-year license issuance and allow military personnel who are serving on active duty to renew late without penalty.

Amendments to §871.12 remove obsolete language that is no longer valid due to two-year license issuance. Additionally, the amendments reduce the number of allowable continuing education credits for serving as a skills examiner at the state licensure exam from six to four hours every two years; and accurately reflect continuing education audit procedures.

Amendments to §871.14 incorporate the newly created Complaints Committee into the complaint process and establish procedures for complaint resolution and informal conferences.

PUBLIC COMMENT

The board did not receive any public comments regarding the proposed rules during the comment period. However, board staff provided comments and the board has reviewed and agrees to the following changes that will clarify the rules.

Change: Concerning §871.14(d)(1) and (3), the term "complaint committee" is changed to "Complaints Committee."

Change: Concerning §871.14(f), the phrase "or licensee" is added twice to clarify that a notice may be sent to an applicant or a licensee.

Change: Concerning §871.14(h), the phrase "informal settlement conference" is changed to read "informal conference." Also, the statement, "A member of the Complaints Committee shall be present at an informal conference." was added to provide consistency with other professional licensing programs.

Change: Concerning §871.14(h)(1), (5), (6), (12), and (13), the rule is changed to modify the terms "informal settlement conference" and "informal hearing" to "informal conference." This change clarifies terminology and provides consistency in the language of the rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

§871.14. Violations, Complaints, and Disciplinary Actions.

(a) Any person may complain to the board alleging that a person has violated the Act or this chapter.

(b) A person wishing to file a complaint against a licensee or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the program director's office. The mailing address is Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183 and the phone number is (512) 834-6615.

(c) The department shall investigate anonymous complaints if the complainant provides sufficient information.

(d) Complaints shall be investigated in accordance with the following procedures.

(1) The program director shall conduct an initial review of the complaint to determine jurisdiction and alleged Act or rule violations. After conducting the initial review, the program director will determine if additional information is needed or if the complaint should be closed, referred to the Complaints Committee or referred for investigation.

(2) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, or relevant evidence.

(3) If it is determined that the matters alleged in the complaint are non-jurisdictional, or would not constitute a violation of the Act or this chapter, the program director, after consulting with the board's attorney may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the Complaints Committee.

(4) The program director shall, at least quarterly until final disposition of the complaint, notify the complainant and the person against whom the complaint has been filed of the status of the complaint unless such notice would jeopardize an investigation.

(5) The Complaints Committee may recommend that the license be revoked, suspended, suspended with probation, suspended on an emergency basis, denied, or that the licensee be reprimanded, that administrative penalties be assessed, or other enforcement action authorized by law.

(6) If the Complaints Committee determines that there are insufficient grounds to support the complaint, the program director shall dismiss the complaint and give written notice of the reason for dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(e) The Complaints Committee may recommend that the board deny an application or initiate disciplinary actions as described in subsection (d)(5) of this section for a violation of the Act or this chapter.

(f) The program director shall give written notice to the applicant or licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, and the applicant or licensee shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(g) If disciplinary action is proposed, the program director shall give written notice by certified mail, return receipt requested, that the licensee or applicant must request, in writing, a formal hearing within 20 days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(h) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether an agreed order may be secured. The Complaints Committee may determine whether the public interest would be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing. A member of the Complaints Committee shall be present at an informal conference.

(1) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing. The program director shall establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal conference by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee or applicant may waive the 10-day notice requirement.

(2) A settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(3) The licensee or applicant, the licensee's or applicant's attorney, a complaints committee member, the executive secretary, the program director, and the board's attorney may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(4) The complainant shall not be considered a party in the settlement conference but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(5) At the conclusion of the informal conference, the complaints committee member, the executive secretary, the program director or the program attorney may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The complaints committee member, the executive secretary, the program director or the program attorney may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(6) The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(7) If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(8) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(9) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or

disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(10) If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the program director for other appropriate action.

(11) A proposed agreed order is not effective until the board has approved the order and it is signed by the board chair.

(12) A licensee's or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(13) If a licensee or applicant who has requested an informal conference fails to appear at the conference and fails to provide notice of their inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 11, 2008.

TRD-200800805
David Weir
Chair
Advisory Board of Athletic Trainers
Effective date: March 2, 2008
Proposal publication date: August 24, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§14.1, 14.2, 14.101 - 14.105, and 14.201, concerning the County Indigent Health Care Program without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8658) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to assist the department in the implementation of the County Indigent Health Care Program, which is a health care program for the indigent population of Texas. The department provides technical assistance to counties, hospital districts, and public hospitals that provide health care services to eligible residents who are unable to access the same care through other funding sources or programs.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 14.1, 14.2, 14.101 - 14.105, and 14.201 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

An amendment to §14.1 incorporates the current department name to be consistent with the current department terminology.

An amendment to §14.2 revises language and adds an additional subsection to clarify the responsibility of the department regarding eligibility disputes.

An amendment to §14.101 revises language to provide a concise definition of program terminology regarding application processing.

An amendment to §14.102 adds a new subsection to clarify residency requirements regarding a person's dwelling.

An amendment to §14.103 adds a new subsection to define non-household members with regard to eligibility determination. The addition required the re-lettering of existing subsections.

An amendment to §14.104 adds a new subsection to provide clarification on excluded income with regard to eligibility determination.

An amendment to §14.105 reflects additional language to clarify the program definition of assets. Additionally, §14.105 has been amended by deleting detailed requirements regarding countable resources that are more appropriate for inclusion in a policy manual.

An amendment to §14.201 adds a new subsection to provide guidance and clarity to counties regarding optional health care services. Additionally, §14.201 has been amended to clarify that physician assistants may now bill Medicaid for services provided to patients independently, as well as through their supervising physicians.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. PROGRAM ADMINISTRATION

25 TAC §14.1, §14.2

STATUTORY AUTHORITY

The amendments are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, §§61.006 - 61.009, that require the department to establish rules for eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under

this program. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800790
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. DETERMINING ELIGIBILITY

25 TAC §§14.101 - 14.105

STATUTORY AUTHORITY

The amendments are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, §§61.006 - 61.009, that require the department to establish rules for eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under this program. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800791
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. PROVIDING SERVICES

25 TAC §14.201

STATUTORY AUTHORITY

The amendment is adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; and Health and Safety Code, §§61.006 - 61.009, that require the department to establish rules for eligibility standards and application, documentation, verification, and reporting procedures for counties in determining eligibility under this program. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800792
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 458-7111 x6972

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CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) adopts the repeal of §§33.13 - 33.15, 33.61 - 33.63, 33.66, 33.112, 33.122, 33.123, 33.125, 33.131 - 33.135, 33.140, 33.301 -33.311, 33.314, 33.315, 33.317 - 33.320, 33.331, 33.334 and 33.351 - 33.358 and the new §§33.1 - 33.7, 33.20, 33.21, 33.30, 33.40, 33.41, 33.60, 33.70 - 33.72 concerning the medical and dental programs under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, known in Texas as the Texas Health Steps (THSteps) Program, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9084) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Texas Health Steps is the Texas name for the federally-mandated Medicaid service known as EPSDT. EPSDT provides medical and dental check-ups, diagnosis, and treatment to Medicaid clients from birth through age 20. By authorization of HHSC, the department operates and administers the outreach and informing, medical and dental screening, and dental treatment services components of EPSDT.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 33.13 - 33.15, 33.61 - 33.63, 33.66, 33.112, 33.122, 33.123, 33.125, 33.131 - 33.135, 33.140, 33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320, 33.331, 33.334, and 33.351 - 33.358 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Current rules are repealed and the new adopted rules represent a more succinct, understandable, and user-friendly set of rules. Additionally, the rules change the initial eligibility

for a dental check-up, which will support HHSC's and the department's THSteps First Dental Home Strategic Initiative.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

Section §33.1 describes the purpose and application of the rules in this chapter. Section 33.2 sets forth the definitions used in this chapter. Section 33.3 describes the outreach and informing obligations and support services provided to clients by THSteps. Section 33.4 describes how THSteps receives and refers complaints from all sources. Section 33.5 describes the requirements for medical and dental providers to participate in THSteps. Section 33.6 describes the primary responsibilities of all THSteps providers. Section 33.7 describes exceptions to the timely delivery of THSteps services.

Subchapter B. Client Rights.

Sections 33.20 and 33.21 describe various client rights, including freedom of choice.

Subchapter C. Confidentiality.

Section 33.30 describes the laws protecting confidentiality of client records and the circumstances under which client information can be shared.

Subchapter D. Eligibility and Periodicity.

Sections 33.40 and 33.41 describe the age restrictions related to eligibility for THSteps services and the periodicity requirements and exceptions for check-ups.

Subchapter E. Medical Check-ups.

Section 33.60 describes the federally-mandated medical check-up services.

Subchapter F. Dental Services.

Section 33.70 identifies the categories of dental services that are available to clients in addition to check-ups, and the fact that prior authorization may be required for some services. Section 33.71 describes limitations and exceptions regarding orthodontic services, including prior authorization that may not be transferred. Section 33.72 describes the purpose of dental utilization reviews and the fact they may result in recoupment, administrative actions, or sanctions.

COMMENTS

The department, on behalf of HHSC, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§33.1 - 33.7

STATUTORY AUTHORITY

The new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800766
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. CLIENT RIGHTS

25 TAC §33.20, §33.21

STATUTORY AUTHORITY

The new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800768
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. CONFIDENTIALITY

25 TAC §33.30

STATUTORY AUTHORITY

The new rule is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200800770
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. ELIGIBILITY AND PERIODICITY

25 TAC §33.40, §33.41

STATUTORY AUTHORITY

The new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800772
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. MEDICAL CHECK-UPS

25 TAC §33.60

STATUTORY AUTHORITY

The new rule is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200800774
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. DENTAL SERVICES

25 TAC §§33.70 - 33.72

STATUTORY AUTHORITY

The new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800776
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§33.13 - 33.15

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800767
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. RECIPIENT RIGHTS

25 TAC §§33.61 - 33.63, 33.66

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800769
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. ELIGIBILITY

25 TAC §33.112

STATUTORY AUTHORITY

The repeal is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800771
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. PERIODICITY

25 TAC §§33.122, 33.123, 33.125

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800773
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. MEDICAL SERVICES

25 TAC §§33.131 - 33.135, 33.140

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800775

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. DENTAL SERVICES

25 TAC §§33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

TRD-200800777
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER H. DENTAL UTILIZATION REVIEW

25 TAC §§33.331, 33.334, 33.351 - 33.358

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200800778
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: February 28, 2008
Proposal publication date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.70

The Commissioner of Insurance adopts the repeal of §7.70, concerning the 2000 annual statements, other reporting forms, and diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the internet. The repeal is adopted without changes to the proposed text published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9909).

REASONED JUSTIFICATION. The repeal of the obsolete section is necessary to permit the simultaneous adoption of new §7.70 that is also published in this issue of the *Texas Register*. The reporting forms adopted under the repealed section have been filed and the due dates for filing the 2000 annual statements and other reports have passed; therefore, the repealed section is no longer necessary.

HOW THE SECTION WILL FUNCTION. The repeal of the obsolete section will permit the adoption of new §7.70 that will adopt by reference the 2007 quarterly and annual statement blanks, the 2008 quarterly statement blanks, other reporting forms, electronic data filings with the NAIC via the internet, and instructions to be used by insurers and certain other entities regulated by the Department when reporting their 2007 and part of their 2008 calendar year financial condition and business operations and activities.

SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of the section is adopted under the Insurance Code §§802.001 - 802.003, 802.051 - 802.056, and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner of Insurance to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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28 TAC §7.70

The Commissioner of Insurance adopts new §7.70, concerning reporting forms and instructions to be used by insurers and certain other entities regulated by the Department when reporting their 2007 and part of their 2008 calendar year financial condition, business operations, and activities. The new section is adopted with nonsubstantive changes to the proposed text published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9910).

REASONED JUSTIFICATION. The new section is necessary to adopt the reporting forms and instructions to be used by insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association when reporting their 2007 and part of their 2008 calendar year financial condition, business operations, and activities. The new section is also necessary to adopt the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings, with the NAIC. The reporting forms include the 2007 annual and quarterly statement blanks, the 2008 quarterly statement blanks, Schedule SIS, management's discussion and analysis, supplemental compensation exhibit, overhead assessment exemption form for insurance company examination expenses, analysis of surplus, separate accounts, supplemental information for county mutuals and HMOs, release of contributions, reserve table, reserve summary, inventory of insurance in force, and summary of insurance in force. The information provided by the completion of the forms is necessary to enable the Department to monitor the solvency, business activities, and statutory compliance of the insurers and the other entities regulated by the Department.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; adopts by reference the NAIC 2007 quarterly and annual statement blanks, the NAIC 2008 quarterly statement blanks, related instructions, and other reporting forms and instructions for reporting the financial condition, business operations and activities of insurance companies and other entities regulated by the Department; and requires insurance companies and other entities regulated by the Department to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the Department. The required documents will provide financial information to the public and regulatory agencies, and will be used by the Department to monitor the financial condition of insurers and other entities regulated by the Department to assure financial solvency and compliance with applicable laws and accounting requirements.

Nonsubstantive changes were made to the proposed text to correct punctuation in §7.70(d)(2)(D), (E), and (F); (e)(2)(E); (g); and (h) for purposes of conformity to agency style and internal consistency. None of the changes, however, materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously subject to the proposal as originally published.

Simultaneously with the adoption of this new section, the Department has adopted the repeal of existing §7.70, which is also published in this edition of the *Texas Register*.

HOW THE SECTION WILL FUNCTION. Adopted §7.70(a) explains the purpose of the section and adopts by reference the forms described in the section. Adopted §7.70(b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Adopted §7.70(c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section and other Department regulations and the NAIC instructions specified in the new section. Adopted §7.70(d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Adopted §7.70(m) provides that the Department may request financial reports other than those specified in this section.

SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The new section is adopted under the Insurance Code §§802.001 - 802.003 and 802.051 - 802.056, which authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business and require certain insurers to make filings with the National Association of Insurance Commissioners; Chapters 2201, 2210 and 2211, and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.004, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152, which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the Commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306, which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101, which authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844; §421.001, which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041, which requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001, which provides that the Commissioner

of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§7.70. Requirements for Filing the 2007 Quarterly and 2007 Annual Statements, the 2008 Quarterly Statements, Other Reporting Forms, and Electronic Data Filings, with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2007 quarterly statements, 2007 annual statement, 2008 quarterly statement blanks, other reporting forms, and electronic data filings, with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2007 quarterly statement blanks, the 2007 annual statement blanks, the 2008 quarterly statement blanks, and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis and Examination Division, Mail Code 303-1A, P. O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate hard copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirements of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium company, group hospital service corporation, and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2007 Health Quarterly Statement for the three quarters of 2007, the 2007 Health Annual Statement for year-end 2007, and on the 2008 Health Quarterly Statement for the three quarters of 2008, if the insurer passes the Health Statement Test as outlined in the "2007 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2007 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2007 Life, Accident and Health Annual Statement, the 2007 Life, Accident and Health Quarterly Statements, and the 2008 Life, Accident and Health Quarterly Statements, and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2007 Annual Statement Instructions, Life, Accident and Health," the "2007 Quarterly Statement Instructions, Life, Accident and Health," and the "2008 Quarterly Statement Instructions, Life, Accident and Health," as applicable. Life insurers meeting the test set forth in this subsection to file the 2007 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2007 Annual Statement Instructions, Health," the "2007 Quarterly Statement Instructions, Health," and the "2008 Quarterly Statement Instructions, Health," as applicable. The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC: 2007 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2007. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(A) it is authorized to write only life insurance on its certificate of authority;

(B) it collected premiums in the prior calendar year of less than $1 million; and

(C) it had a profit from operations in the prior two calendar years.

(2) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2007 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2008 (stipulated premium companies, April 1, 2008);

(B) 2007 Life, Accident and Health Annual Statement of the Separate Accounts for the 2007 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2008;

(C) 2008 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2008. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2007 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2008, if the company qualifies as described in this subsection;

(E) 2007 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2007, if the company qualifies as described in this subsection;

(F) 2008 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2008, if the company qualifies as described in this subsection;

(G) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(H) Management's Discussion and Analysis, due on or before April 1, 2008;

(I) Statement of Actuarial Opinion, due on or before March 1, 2008 (stipulated premium companies, April 1, 2008). The actuarial opinion shall be prepared in accordance with paragraph (5) of this subsection;

(J) Schedule SIS, due on or before March 1, 2008. This filing is also required if filing a Health Annual Statement, as applicable;

(K) Supplemental Compensation Exhibit, due on or before March 1, 2008 (stipulated premium companies, April 1, 2008). This filing is also required if filing a Health Annual Statement, as applicable;

(L) The Texas Health Insurance Risk Pool shall file the 2007, Health Annual Statement, the 2007 Quarterly Statements, and the 2008 Quarterly Statements as follows:

(i) 2007 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2008;

(ii) 2007 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1 - Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2007;

(iii) 2008 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1 - Cash, and Part 2 - Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2008; and

(iv) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(M) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2008. (stipulated premium companies, April 1, 2008). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §451.151; otherwise, this form should not be filed; and

(N) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2008 (stipulated premium companies, April 1, 2008).

(3) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2007 Life, Accident and Health Annual Statement electronic filing and PDF filing, due on or before March 1, 2008 (stipulated premium companies, April 1, 2008);

(B) 2007 Life, Accident and Health Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2008;

(C) 2007 Life, Accident and Health Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2007. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2008 Life, Accident and Health Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2008. A Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than $1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(E) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions.

(5) Statement of Actuarial Opinion required by paragraph (2)(I) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to either the 2007 Life, Accident and Health Annual Statement or the 2007 Health Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2007 Life, Accident and Health Annual Statement or the 2007 Health Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an

Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2008.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the 2006 calendar year or had gross written premiums in 2007 in excess of $6 million, any Mexican casualty insurance company licensed under the Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2007 Annual Statement Instructions, Property and Casualty," the "2007 Quarterly Statement Instructions, Property and Casualty," and the "2008 Quarterly Statement Instructions, Property and Casualty," as applicable. The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC: 2007 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2007.

(2) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2007 Property and Casualty Annual Statement, due on or before March 1, 2008, including the printed investment schedule detail;

(B) 2008 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2008;

(C) 2007 Combined Property/Casualty Annual Statement, due on or before May 1, 2008. This statement is required only for those affiliated insurers that wrote more than $35 million in direct premiums as a group in calendar year 2007, as disclosed in Schedule T of the Annual Statement(s);

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) The actuarial opinion submitted shall be prepared in accordance with the "2007 Annual Statement Instructions, Property and Casualty;"

(F) Schedule SIS, due on or before March 1, 2008;

(G) Supplemental Compensation Exhibit, due on or before March 1, 2008;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2008. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(I) Texas Supplement for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2008;

(J) Texas Supplemental "A" for County Mutuals (Texas Edition) (required of Texas county mutual insurance companies only), due on or before March 1, 2008;

(K) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual insurance companies, due on or before March 1, 2008;

(L) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers);

(M) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2007 Property and Casualty Annual Statement, due on or before March 1, 2008;

(ii) 2007 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2007;

(iii) 2008 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2008; and

(iv) Management's Discussion and Analysis, due on or before April 1, 2008.

(v) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(N) The Texas FAIR Plan Association shall complete and file the following:

(i) 2007 Property and Casualty Annual Statement, due on or before March 1, 2008;

(ii) 2007 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2007;

(iii) 2008 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2008;

(iv) Statement of Actuarial Opinion, due on or before March 1, 2008;

(v) Actuarial Opinion Summary prepared in accordance with §7.9 of this title; and

(vi) Management's Discussion and Analysis, due on or before April 1, 2008.

(vii) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(3) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2007 Property and Casualty Annual Statement electronic filing and PDF filing, due on or before March 1, 2008;

(B) 2007 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2007;

(C) 2008 Property and Casualty Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2008;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(E) Electronic combined insurance exhibit, due on or before May 1, 2008; and

(F) Combined annual statement electronic filing and PDF filing, due on or before May 1, 2008.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2008.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the three quarters for the 2007 calendar year, the 2007 calendar year, and the three quarters for the 2008 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2007 Annual Statement Instructions, Fraternal," the "2007 Quarterly Statement Instructions, Fraternal," and the "2008 Quarterly Statement Instructions, Fraternal," as applicable. The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC: 2007 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2007.

(2) Domestic insurer reports and forms in paper copy to be filed only with the department, as follows:

(A) 2007 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2008;

(B) 2007 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2008;

(C) 2008 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2008;

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions;

(E) Management's Discussion and Analysis, due on or before April 1, 2008;

(F) Statement of Actuarial Opinion, due on or before March 1, 2008.

(G) Supplemental Compensation Exhibit, due on or before March 1, 2008;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2008. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2008.

(3) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) 2007 Fraternal Annual Statement electronic filing and PDF filing, due on or before March 1, 2008;

(B) 2007 Fraternal Annual Statement of the Separate Accounts electronic filing and PDF filing, due on or before March 1, 2008;

(C) 2007 Fraternal Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2007;

(D) 2008 Fraternal Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2008; and

(E) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms.

(5) Statement of Actuarial Opinion required by paragraph (2)(F) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to the 2008 Fraternal Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title.

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title to opine on the application of X factors, shall attach this opinion to the 2007 Fraternal Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2008.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the three quarters of the 2007 calendar year, the 2007 calendar year, and the three quarters of the 2008 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2007 Annual Statement Instructions, Title," the "2007 Quarterly Statement Instructions, Title," and the "2008 Quarterly Statement Instructions, Title," as applicable. The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC: 2007 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2007.

(2) Domestic insurer reports and forms in paper copy to be filed only with the department as follows:

(A) 2007 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2008;

(B) 2008 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2008;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions;

(D) Management's Discussion and Analysis, due on or before April 1, 2008;

(E) Statement of Actuarial Opinion, due on or before March 1, 2008;

(F) Supplemental Compensation Exhibit, due on or before March 1, 2008;

(G) Schedule SIS, due on or before March 1, 2008;

(H) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2008. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(I) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2008.

(3) Foreign companies filing electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2007 Title Annual Statement electronic filings and PDF filings, due on or before March 1, 2008;

(B) 2007 Title Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2007;

(C) 2008 Title Quarterly Statement electronic filings and PDF filings, due on or before May 15, August 15, and November 15, 2008;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(E) Management Discussion and Analysis, due on or before April 1, 2008; and

(F) Statement of Actuarial Opinion, due on or before March 1, 2008.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2008.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2007 Quarterly Statements, the 2007 Health Annual Statement, and the 2008 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement forms as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2007 Annual Statement Instructions, Health," and the "2007 Quarterly Statement Instructions, Health," and the "2008 Quarterly Statement Instructions, Health," as applicable. The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The Statement of Actuarial Opinion shall include the additional requirements of the department set forth in paragraph (2)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC: 2007 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2007. With each quarterly filing, include an up-to-date and completed Schedule E - Part 3 - Special Deposits, utilizing the format from the 2006 Health Annual Statement.

(2) Domestic and foreign insurer reports and forms in paper copy to be filed only with the department:

(A) 2007 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2008;

(B) 2008 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2008. With each quarterly filing, include an up-to-date and completed Schedule E - Part 3 - Special Deposits, utilizing the format from the 2007 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2008; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2008. In addition to the requirements set forth in the "2007 Annual Statement Instructions, Health," the department requires that the actuarial opinion include the following:

(i) The Statement of Actuarial Opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement

of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the "2007 Annual Statement Instructions, Health," relating to the Actuarial Certification, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(3) Domestic insurer reports and forms to be filed with the department:

(A) Supplemental Compensation Exhibit in paper copy only, due on or before March 1, 2008;

(B) Texas Overhead Assessment Exemption Form (Texas Edition) in paper copy only, due on or before March 1, 2008. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(C) Texas HMO Supplement Annual (Texas Edition), in paper copy and electronic filing, containing annual data for calendar year 2007, to be completed according to the instructions provided by the department, due on or before March 1, 2008.

(D) Texas HMO Supplement Quarterly (Texas Edition), in paper copy and electronic filings;

(i) containing quarterly statement data for calendar-year 2007, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2007; and

(ii) containing quarterly statement data for calendar-year 2008, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2008.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) 2007 Health Annual Statement electronic filing, and PDF filing, due on or before March 1, 2008;

(B) 2007 Health Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2007;

(C) 2008 Health Quarterly Statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2008;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(E) Statement of Actuarial Opinion, due on or before March 1, 2008; and

(F) Management Discussion and Analysis, due on or before April 1, 2008.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2007 calendar year with the department only, on or before March 1, 2008:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed; and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 of this title (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2007 calendar year with the department only, on or before April 1, 2008:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3-1/2 Percent Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3-1/2 Percent) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2007 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2008:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code §401.151; otherwise, this form should not be filed.

(l) Requirements for Mexican casualty insurance companies. Each Mexican casualty insurance company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2007 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed to the extent specified in paragraph (1) of this subsection and in accordance with the "2007 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2008:

(1) 2007 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the Comisión Nacional de Seguros y Fianzas approving the 2007 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2008.

TRD-200800743
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: February 27, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 463-6327

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CHAPTER 9. TITLE INSURANCE
SUBCHAPTER D. PERSONAL PROPERTY TITLE INSURANCE

28 TAC §9.501

The Commissioner of Insurance adopts new Subchapter D, §9.501, concerning the adoption by reference of amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State* of Texas (Basic Manual). The new section is adopted without change to the proposed text published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8282).

REASONED JUSTIFICATION. The amendments to the Basic Manual, which the new section adopts by reference, were considered at a hearing on October 18, 2007, Docket Number 2672, in accordance with the Insurance Code, §2751.051 and §2751.053. The adopted amendments provide forms, endorsements, and rules for the writing of personal property title insurance. All forms and rules have been adopted for use in commercial transactions. The adoption of the new forms and rules to the Basic Manual will result in consistent administration of the marketing of the new product and will facilitate efficient, industry-wide regulation of the new product. The adopted amendments are identified in this Order by the item numbers used at the October 18, 2007 hearing. Pursuant to Commissioner's Order No. 08-0094, February 6, 2008, Agenda Items 2007-11 - 19 were disapproved. The effective date of the adopted section is March 31, 2008.

HOW THE SECTION WILL FUNCTION. The Agenda Items which are the subject of this adoption are as follows:

The adopted amendments to the Basic Manual are identified by the item number used at the October 18, 2007 hearing. These items were incorporated into the Basic Manual. The adopted amendments also change the names of forms submitted with Items 2007-1 - 2, 20 - 26, and 44 - 45 to clarify form types and to provide a generic naming scheme for all forms. In addition, this adoption adds a statement on each endorsement to indicate with which form each endorsement may be issued. Further, all forms are assigned a form number; and all endorsements are assigned an endorsement number that includes the form number to which the endorsement may be issued. Forms are also re-formatted to provide uniformity and to reduce page volume. The adopted amendments delete the consumer notice language from Items 2007-23 - 26 in conformity with Commissioner's Bulletin No. B-0023-07, issued May 22, 2007, relating to consumer notice of toll-free telephone numbers and procedures for obtaining information and filing complaints. The adopted amendments change the organizational structure of the Basic Manual to provide a new section for personal property title insurance and to provide new subsection tabs for: Insurance Code Chapter 2751, forms and endorsements, procedural rules, and rates rules. Finally, the adopted amendments move Items 54 and 55 from the procedural rule section of the old manual to the new procedural rule section for personal property title insurance.

The Texas Department of Insurance has filed a copy of each of the adopted items with the Texas Register section of the Secretary of State. Copies of the adopted items can be obtained from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter recommended that the personal property title insurance issues be considered in a proceeding separate from those of the Biennial Hearing related to real property title insurance. The commenter requested that Item 2007-57 be revised to provide for a biennial hearing process similar to but separate from that employed to consider real property title insurance issues. The commenter also suggested that the separate proceeding be held in a similar fashion as the real property biennial, but based on an odd-numbered year schedule as opposed to an even-numbered year schedule.

Agency Response: The Department disagrees. The title insurance biennial hearing process is a statutory requirement of the Insurance Code, Chapter 2703, which mandates a biennial hearing for the fixing and promulgating of title insurance rates during each even-numbered year. The statute does not differentiate between personal and real property title insurance nor does S.B. 1153 except personal property from the requirements of Chapter 2703.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For Item 2007-57 With Changes: Texas Land Title Association.

Against: None.

STATUTORY AUTHORITY. The new subchapter is adopted pursuant to the Insurance Code, §2751.051 and §2751.053, as enacted by S.B. 1153, and the Insurance Code §2551.003 and §36.001. Section 2751.051 requires the Commissioner to prescribe policy forms. Section 2751.053 requires the Commis-

sioner to provide reasonable notice and a hearing to title insurance companies, title insurance agents, and the public prior to the adoption of policy forms. Section 2551.003 authorizes the Commissioner to promulgate and enforce rules prescribing underwriting standards and practices and to promulgate and enforce all other rules necessary to accomplish the purposes of Title 11, which regulates title insurance. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2008.

TRD-200800736
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 31, 2008
Proposal publication date: November 16, 2007
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE
SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.702, 39.703, 39.707, 39.709

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts amendments to §§39.702, 39.703, 39.707, and 39.709.

Sections 39.703 and 39.709 are adopted *with changes* to the text and will be republished. Sections 39.702 and 39.707 are adopted *without changes* to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6049) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of this rulemaking is to implement Senate Bill (SB) 1604, 80th Legislature, 2007, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Texas Department of State Health Services (department) to the commission. This rulemaking intends to transfer the technical requirements for these programs from the department's rules in 25 TAC §289.254 and §289.260 into new subchapters of the commission's radioactive substance rules in Chapter 336. While the technical requirements remain the same, these new commission programs will be integrated into and administered under the commission's existing radioactive material program requirements for application processing, public notice, public participation, licensing fees, and enforcement. The amendments to Chapter 39, Subchapter M establish the public notice requirements for radioactive materials licenses issued under Chapter 336.

SB 1604 also establishes a new state fee for disposal of radioactive substances and amends underground injection control requirements for uranium mining. The commission intends to address the new requirements in separate rulemaking actions.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 281, Applications Processing; and Chapter 336, Radioactive Substance Rules.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with *Texas Register* requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, August 2006.

The commission adopts amendments to §39.702 to clarify that the notice of declaration of administrative completeness must be published in a newspaper according to the requirements of §39.707.

The commission adopts amendments to §39.703 to establish uniform notice requirements for the notices of completion of technical review for all radioactive material license applications under Chapter 336. The commission requires public notice providing a thirty day comment and hearing request period on applications for new licenses, renewals, and major amendments. In response to comments, the commission modifies the provisions of §39.703(b) to remove reference to protests or hearing requests on minor amendment applications, requiring only a ten day comment period on notices for minor amendments of all radioactive material licenses under Chapter 336.

The commission adopts amendments to §39.707 to establish public notice requirements for licenses for source material recovery, by-product disposal, and storage and processing of radioactive materials.

The commission adopts amendments to §39.709 to establish public notice requirements for the notice of hearing on applications for radioactive material license. The commission adopts amendments to new §39.709(d) to implement Section 33(k)(4) of SB 1604. In response to comments, §39.709(d) is modified to state that the notice is provided "by mail."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "A major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 39 establish procedural requirements for the issuance

of public notice for a license application. The amendments to Chapter 39 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments establish procedural requirements for radioactive substance disposal facilities, source material recovery facilities, or commercial radioactive substances storage and processing facilities. The rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the department to the commission. The rulemaking in Chapter 336 transfers the technical requirements for these licensing programs from the department's existing rules to the commission's rules. The rulemaking also integrates the transferring license programs into existing commission procedural requirements in Chapters 39 and 281.

Furthermore, the rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency. The Texas Health and Safety Code, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. Texas Health and Safety Code, §401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The rules are compatible with federal law.

The rules do not exceed an express requirement of state law. The Texas Health and Safety Code, Chapter 401, establishes general requirements, including requirements for public notices, for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to Texas Health and Safety Code, Chapter 401, as provided in SB 1604.

The rules are compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

These rules are adopted under specific authority of the Texas Health and Safety Code, Chapter 401. Texas Health and Safety Code, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment of the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these rules. These rules implement SB 1604, transferring certain regulatory responsibilities for the control of radioactive material from the department to the commission. This rulemaking is reasonably taken to fulfill an obligation required by federal law for the control of radioactive material, which is an exempt action under Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these rules and performed an assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these rules is to implement changes to the Texas Radiation Control Act required by SB 1604, 80th Legislature, 2007 for the issuance of public notice for the licensing of the disposal of radioactive substances, recovery of source material, and commercial radioactive substances processing and storage. The rules would substantially advance this purpose by requiring public notices on license applications subject to the commission's jurisdiction under TRCA as amended by SB 1604.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. The rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The rules establish public notice requirements and do not affect real property. The rules do not change the existing technical requirements that were in place under the department's program. Therefore, the commission's rules do not affect real property in a manner that is different than may have been affected under the department's requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rules and determined that the adopted rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the rulemaking action is not subject to the CMP.

PUBLIC COMMENT

The commission held a public hearing on September 25, 2007. The comment period closed on October 15, 2007. Comments were received from Mesteña Uranium, L.L.C. (Mesteña); the Lone Star Chapter of the Sierra Club (Sierra Club); the Uranium Committee of the Texas Mining and Reclamation Association (TMRA); Kelly Hart & Hallman LLP on behalf of Uranium Energy Corp., AREVA NC, Inc., and Uranerz Energy Corporation (UAU); Hance Scarborough Wright Woodward & Weisbart on behalf of Waste Control Specialists LLC (WCS); and the Texas Radiation Advisory Board (TRAB). Mesteña supports the revisions as necessary for the orderly and complete program transfer of the radioactive materials programs that oversee uranium recovery operations. The Sierra Club commented that the Sierra Club is pleased with the proposed rules overall and that the proposed rules adequately implement the statutory changes made by SB 1604. TMRA commented on its appreciation of the time and effort the TCEQ has put forth as part of the rulemaking process. Specific comments are addressed below.

RESPONSE TO COMMENTS

General Notice Requirements

The TRAB commented that the commission should consider methods other than mail and newspaper publication for providing public notice on radioactive materials applications. The TRAB suggested using the internet for providing public notice.

The commission appreciates the comment. Mailed notice and newspaper notice are the primary methods used for providing notice for other permit programs at the TCEQ based on statutory requirements for providing notice, and it is the commission's desire to follow any specific statutory requirements and incorporate the licensing programs transferred from the department into existing processes at the TCEQ for encouraging public participation. However, the commission does recognize that the internet may be a more effective and economic method for providing information to the public. The commission's Office of the Chief Clerk currently maintains an accessible database on the internet that allows the viewing of public notice documents and the tracking of the status of pending applications. The commission also encourages the executive director to maintain information on the Radioactive Materials Division web page that reflects the status of radioactive material license applications. No changes were made in response to the comment.

The Sierra Club commented that the rules should consolidate the notice requirements applicable to radioactive material licenses and injection well permits for *in situ* uranium mining so that the radioactive material license applications for uranium mines meet the more stringent notice provisions required for injection well permit applications.

Commission rules already allow an applicant to combine notice to satisfy more than one applicable requirement of Chapter 39. An applicant has the option to consolidate the notice required for two or more activities that require notice under §39.405(d) so long as the consolidated notice complies with the requirements that would apply to the notice if provided separately. No changes were made in response to the comment.

Notice of Declaration of Administrative Completeness

TMRA commented that the requirement to issue public notice upon declaration of administrative completeness was not a requirement under department rules and requests demonstration of the legal basis for additional notice requirements.

The commission acknowledges that the department's rules do not require the issuance of public notice upon declaration of administrative completeness. The commission intends to incorporate the transferred licensing programs into the commission's existing processes for public participation. Many TCEQ applications for new, major amendments, and renewals of permits or licenses are subject to two rounds of public notice, one notice issued after the application is submitted and a subsequent notice issued after the completion of the review of the application. The commission intends that all applications for new licenses, major amendments, and renewals are subject to these two rounds of public notice. Authority to require notice requirements is provided in Texas Health and Safety Code, §§401.103, 401.104, 401.264, Texas Water Code, §5.115 and Section 33(c) of SB 1604.

Notice of Completion of Technical Review

UAU commented that §39.703(b) includes a hearing request period for applications for minor amendments of radioactive material licenses issued under Chapter 336, while applications for minor amendments are not subject to a contested case hearing.

The commission agrees with this comment, and §39.703(b) has been modified in response to the comment to remove provisions for protesting or requesting a contested case hearing on minor amendment applications.

UAU commented that the commission should define the types of amendments that fall into the "major" and "minor" categories.

Commission rules in 30 TAC §305.62 already establish requirements for determining whether a proposed amendment of a radioactive material license is a "major" or "minor" amendment. Under §305.62(c)(1), a major amendment includes a change to a substantive term, provision, requirement, or a limiting parameter of the license, including an amendment: which authorizes a change in the type of concentration of limits of wastes to be received; authorizes receipt of wastes from other states not authorized in the existing license; authorizes a change in the operator of the facility; authorizes closure and the final closure plan for the disposal site; transfers the license to the custodial agency; or authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required. A minor amendment is an amendment to improve or maintain the licensed quality or method of disposal of waste or other changes that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. No change was made in response to the comment.

The Sierra Club commented that the deadline for filing public comments, protest or hearing requests on minor amendments should be 30 days after the notice is published rather than 10 days after the notice is published. The Sierra Club believes a longer period of time is needed by affected property owners to assess potential impacts on a minor amendment application.

The commission disagrees with lengthening the comment period for minor amendments. In response to comments previously mentioned, the reference to filing protests and requests for hearing on minor amendment applications was removed from the rule language. A ten-day comment period is consistent with minor amendments of other permits at the TCEQ. In the commission's experience, a ten-day comment period is sufficient for the public review of minor amendment applications that do not change a

substantive term, provision, or limiting parameter of the permit or license. No changes were made in response to the comment.

Mailed Notice for Radioactive Material Licenses

The Sierra Club commented that §39.705 is not sufficient because the mailed notice is only provided to adjacent landowners.

The commission disagrees with the comment because mailed notice is provided to various people in addition to adjacent landowners. While the commission did not propose amendments to §39.705, the rule requires mailing notice to: the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of; the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of; persons who request to be on the mailing list for the application or for all applications in the county; the applicant; any other person the executive director or chief clerk may elect to include; and to each owner of property adjacent to the proposed site. No changes were made in response to the comment.

Notice of Contested Case Hearing on Application

WCS commented that §39.709(d) should be revised to indicate that the notice of the contested case hearing required in the subsection is provided "by mail" to reflect the statutory language in Section 33(k)(4) of SB 1604.

The commission agrees with the comment and has revised §39.709(d) to add the words "by mail."

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendments are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules), notice must be mailed by the Office of the Chief Clerk and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For application for a minor amendment to a license issued under Chapter 336, of this title notice must be mailed by the Office of the Chief Clerk under this subchapter. The deadline to file public comment is ten days after mailing.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) Except as provided in subsection (d) of this section, for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this title (relating to Decommissioning Standards), Subchapter K of this title (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste From Public Water Systems), or Subchapter L of this title (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), notice must be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) or Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities), notice must be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(13) and (d) of this title (relating to Text of Public Notice).

(d) For an application for a new license to dispose of by-product material under Chapter 336, Subchapter L of this title that was filed with the Department of State Health Services on or before January 1, 2007, notice under this section must be provided to the applicant, the office of public interest counsel, the executive director, and any person who timely submitted a request for a contested case hearing by mail at least 10 days in advance of the hearing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 281. APPLICATIONS PROCESSING
SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.19

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts the amendment to §281.19. Section 281.19 is adopted *without change* to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6056) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of this rulemaking is to implement Senate Bill (SB) 1604, 80th Legislature, 2007, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Texas Department of State Health Services (department) to the commission. This rulemaking intends to transfer the technical requirements for these programs from the department's rules in 25 TAC §289.254 and §289.260 into new subchapters of the commission's radioactive substance rules in Chapter 336. While the technical requirements remain the same, these new commission programs will be integrated into and administered under the commission's existing radioactive material program requirements for application processing, public notice, public participation, licensing fees, and enforcement. The amendments to Chapter 281, Subchapter A establish the procedural requirements for the technical review of radioactive material licenses under Chapter 336.

SB 1604 also establishes a new state fee for disposal of radioactive substances and amends underground injection control requirements for uranium mining. The commission intends to address the new requirements in separate rulemaking actions.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 39, Public Notice; and Chapter 336, Radioactive Substance Rules.

SECTION DISCUSSION

The commission adopts administrative changes throughout this section to be consistent with *Texas Register* requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, August 2006.

The commission adopts the amendment to §281.19(a) to correct outdated cross-references.

The commission adopts the amendment to §281.19(a) and (c) to extend the maximum period for conducting the technical review of radioactive material license applications from 450 days to 600 days and to increase the maximum number of notice of deficiencies that can be submitted by the executive director in the review of a license application from two to four. The longer review period and additional rounds of executive director comment on applications will greatly improve the quality of applications submitted to the agency and, thus, the quality and protectiveness of licenses issued by the commission. Applications for radioactive material licenses are complex and require the collection of a great deal of information that is unique to a proposed location. The additional time for conducting the technical review allows an applicant sufficient time to provide all required information to the executive director. The commission also adopts the amendment to allow the executive director to extend or delay the schedule under this subsection to comply with the priority given to the review and processing of applications pursuant to TRCA, §401.237(c) and Section 34(b) and (c) of SB 1604. The commission intends that the changes to this subsection apply only to applications submitted after the effective date of this rule change.

The commission adopts the amendment to §281.19(d) to address the applications for licenses that were pending with the department prior to transfer of agency responsibilities established under SB 1604. The applications that are pending at the department will be subjected to a maximum technical review period of 600 days at the commission with a maximum of two notices of deficiency issued by the executive director. The processing of these pending applications is subject to the priority for the review and processing of radioactive material licenses in TRCA, §401.237(c) and Section 34(b) and (c) of SB 1604.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "A major environmental rule" as defined in the statute. "A Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment to Chapter 281 is procedural, establishing the requirements for the processing of a license application. The amendment to Chapter 281 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment establishes procedural requirements for radioactive substance disposal facilities, source material recovery facilities, or commercial radioactive substances storage and processing facilities. The rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the department to the commission. The rulemaking in Chapter 336 transfers the technical requirements for these licensing programs from the department's existing rules to the commission's rules. The rulemaking also integrates the transferring license programs into existing commission procedural requirements in Chapters 39 and 281.

Furthermore, the rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency. Texas Health and Safety Code, Chapter 401, authorizes the commission to regulate the disposal of

most radioactive substances in Texas. Texas Health and Safety Code, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The rulemaking is compatible with federal law.

The rulemaking does not exceed an express requirement of state law. Texas Health and Safety Code, Chapter 401, establishes general requirements for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to Texas Health and Safety Code, Chapter 401, as provided in SB 1604.

The rulemaking is compatible with a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The rulemaking is compatible with the NRC requirements and the requirements for retaining status as an "Agreement State."

The rulemaking is adopted under specific authority of the Texas Health and Safety Code, Chapter 401. Texas Health and Safety Code, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment of the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking. The rulemaking implements SB 1604, transferring certain regulatory responsibilities for the control of radioactive material from the department to the commission. This rulemaking is reasonably taken to fulfill an obligation required by federal law for the control of radioactive material, which is an exempt action under Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated the rulemaking and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to implement changes to the Texas Radiation Control Act required by SB 1604, 80th Legislature, 2007 for the processing of applications for a license for the disposal of radioactive substances, recovery of source material, and commercial radioactive substances processing and storage. The rulemaking would substantially advance this purpose by establishing the technical review period for license applications subject to the commission's jurisdiction under the TRCA as amended by SB 1604.

Promulgation and enforcement of the rulemaking would be neither a statutory nor a constitutional taking of private real property. The rulemaking does not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The rulemaking establishes application processing requirements and does not affect real property. The rulemaking does not change the existing technical requirements that were in place under the department's program. Therefore, the commission's rulemaking does not affect real property in a manner that is different than may have been affected under the department's requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and determined that the rulemaking is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the rulemaking action is not subject to the CMP.

PUBLIC COMMENT

The commission held a public hearing on September 25, 2007. The comment period closed on October 15, 2007. Comments were received from Mesteña Uranium, L.L.C. (Mesteña); the Lone Star Chapter of the Sierra Club (Sierra Club); the Uranium Committee of the Texas Mining and Reclamation Association (TMRA); Kelly Hart & Hallman LLP on behalf of Uranium Energy Corp., AREVA NC, Inc., and Uranerz Energy Corporation (UAU); Hance Scarborough Wright Woodward & Weisbart on behalf of Waste Control Specialists LLC (WCS); and the Texas Radiation Advisory Board (TRAB). Mesteña supports the revisions as necessary for the orderly and complete program transfer of the radioactive materials programs that oversee uranium recovery operations. The Sierra Club commented that the Sierra Club is pleased with the proposed rule overall and that the proposed rule adequately implements the statutory changes made by SB 1604. TMRA commented on its appreciation of the time and effort the TCEQ has put forth as part of the rulemaking process. Specific comments are addressed below.

RESPONSE TO COMMENTS

General Comments on Applications Processing

The Sierra Club commented that the commission's proposal preamble incorrectly stated that changes to §281.19(a) apply after the effective date of the rule change because SB 1604 was effective upon passage.

The commission disagrees with the comment. While SB 1604 was effective upon passage, the terms of SB 1604 in Section 33(d) require the application of the department's rules until the commission adopts other rules. No changes were made in response to the comment.

Mesteña recommends that the commission develop regulatory guidance to assist in the development of an application.

The commission agrees with the comment and intends to develop regulatory guidance and application forms that will enhance the quality of applications submitted and should reduce the amount of time required for preparation, revision, and review of a license application. No changes were made in response to the comment.

Technical Review

The Sierra Club supports the rule change to allow more time to review an application in certain cases. UAU expressed appreciation for the commission's attempt to recognize the complexity of radioactive material licenses by providing an extended review period. WCS expressed agreement with the extension of time to conduct the technical review. Mesteña and TMRA commented that §281.19(a) increases the length of time for the technical review of a license application that was available under the department's rules. TMRA seeks understanding on how the commission could determine that there will be no adverse fiscal impacts to businesses by the increase of the technical review period up to 600 days. TMRA requests the commission to clarify if the intent of the extension is to help keep applications within the review process rather than being returned to the applicant.

The commission appreciates the comments. The commission has determined that applications for radioactive material license can be quite complex and require the generation of site-specific data and studies. Therefore, the increase in the maximum amount of time allowed for completing the technical review from 450 days to 600 days for radioactive material licenses is warranted. The commission does not agree that this is an increase from department requirements for completing the technical review. Under the department rules in 25 TAC §289.252, the technical review period can be unlimited. The review period at the commission is not unlimited and deficient applications may be returned to the applicant. Under the rules adopted by the commission, every applicant has the ability to minimize the amount of time required to complete the technical review by submitting a high-quality application. The technical review period will not exceed 255 days, but the period may be extended only if the application is technically deficient. Such an extension is not intended to help nor hinder an applicant, but is made in recognition of the complexity of the subject matter and the amount of information that needs to be submitted in the application. The commission does not agree that an applicant will be affected financially by the lengthening of the maximum review period because an applicant controls the length of the review period by submitting quality application materials. And, the technical review of license applications at the commission is not an indefinite process. No changes were made in response to these comments.

UAU expressed appreciation for the commission's attempt to recognize the complexity of radioactive material licenses by providing an opportunity for additional Notices of Deficiency. WCS expressed support for additional opportunities of Notices of Deficiency and recommends that §281.19(d) should also be modified to allow four Notices of Deficiency on applications that were pending at the department on the effective date of SB 1604, providing the same number of rounds of review as afforded new applications. The Sierra Club does not support the change to allow four Notices of Deficiency rather than two, because: such a process would allow applicants to submit weak applications in hopes that commission staff will not catch omissions or that staff will perform work for the applicant; the allowance of four Notices of Deficiency is unfair to applicants who submit good applications, and; it will add work and costs to the TCEQ. TMRA requests the commission to clarify if the intent of the increase in the number of Notices of Deficiency is to help keep applications within the review process rather than being returned to the applicant.

The commission appreciates the comments. Because of the complexity and amount of information required in license applications, additional rounds of technical review provided in the notice of deficiency process are warranted up to a maximum of four notices for a new application. These additional rounds are not intended to help or hinder the applicant, but are provided to assure a thorough review of the application. The increase in the number of notices is not provided so that TCEQ staff will perform the applicant's work. TCEQ staff are not authorized to perform the applicant's work. The commission does not agree that the rule change will affect the agency's costs because application fees cover the agency's costs for review of the applications. The commission disagrees with the comment that recommends that applications that were pending at the department on the effective date of SB 1604 be subjected to a maximum of four notices of deficiency. Under Section 33(d) of SB 1604, the commission is required to continue a proceeding of the department including the processing of an application for a license. Subjecting these pending applications to the same process for new applications, would ignore the progress made on the review of pending applications since the time the applications were submitted to the department. No changes were made in response to these comments.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendment is also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts amendments to §§336.1, 336.5, 336.105, 336.201, 336.203, 336.207, 336.211, 336.213, 336.601, 336.613, and 336.619. The commission also adopts new §§336.1101, 336.1103, 336.1105, 336.1107, 336.1109, 336.1111, 336.1113, 336.1115, 336.1117, 336.1119, 336.1121, 336.1123, 336.1125, 336.1127, 336.1129, 336.1131, 336.1133, 336.1135, 336.1201, 336.1203, 336.1205, 336.1207, 336.1209, 336.1211, 336.1213, 336.1215, 336.1217, 336.1219, 336.1221, 336.1223, 336.1225, 336.1227, 336.1229, 336.1231, 336.1233, 336.1235 and the repeal of §336.11.

Sections 336.1, 336.105, 336.211, 336.213, 336.601, 336.619, 336.1101, 336.1103, 336.1105, 336.1107, 336.1111, 336.1113, 336.1115, 336.1117, 336.1121, 336.1125, 336.1129, 336.1135, 336.1213, and 336.1235 are adopted *with changes* to the text and will be republished. Sections 336.5, 336.201, 336.203, 336.207, 336.613, 336.1109, 336.1119, 336.1123, 336.1127, 336.1131, 336.1133, 336.1201, 336.1203, 336.1205, 336.1207, 336.1209, 336.1211, 336.1215, 336.1217, 336.1219, 336.1221, 336.1223, 336.1225, 336.1227, 336.1229, 336.1231, 336.1233, and the repeal of §336.11 are adopted *without changes* to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6066) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of this rulemaking is to implement Senate Bill (SB) 1604, 80th Legislature, 2007, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). The bill transfers responsibilities for the regulation and licensing of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Texas Department of State Health Services (department) to the commission. This rulemaking intends to transfer the technical requirements for these programs from the department's rules in 25 TAC §289.254 and §289.260 into new subchapters of the commission's radioactive substance rules in Chapter 336. While the technical requirements remain the same, these new commission programs will be integrated into and administered under the commission's existing radioactive material program requirements for application processing, public notice, public participation, licensing fees, and enforcement.

SB 1604 also establishes a new state fee for disposal of radioactive substances and amends underground injection control requirements for uranium mining. The commission intends to address the new state fee and underground injection control requirements in separate rulemakings. In light of comments received on this rulemaking, the commission has also decided to address specific financial assurance requirements in future rulemaking.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 39, Public Notice; and Chapter 281, Applications Processing.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with *Texas Register* requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual,* August 2006.

SUBCHAPTER A: GENERAL PROVISIONS.

§336.1. Scope and General Provisions.

The commission adopts amendments to §336.1(a) to reflect the new commission responsibilities under SB 1604 for the regulation and licensing of source material recovery, by-product disposal, and the commercial storage and processing of radioactive substances. In response to comment, §336.1(a) was modified to remove the term "mine."

The commission adopts amendments to §336.1(f)(5) - (7) to prohibit source material recovery, by-product disposal, and the commercial storage and processing of radioactive substances unless the person is licensed or exempted by the commission.

§336.5. Exemptions.

The commission adopts amendments to §336.5(c) to reflect amendments to THSC, §401.106(a) under SB 1604 to provide the commission authority to exempt by rule a source of radiation or a kind of use or user from the licensing or registration requirements provided by Chapter 401 if the commission finds that the exemption of the source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment. Prior to SB 1604, only the department had authority to exempt a source of radiation or a kind of use or user from licensing requirements provided by Chapter 401.

The commission adopts amendments to §336.5(d) to recognize any of the department's exemptions that were issued prior to the effective date of SB 1604. The commission may modify the exemptions from the statutory requirements in future rulemaking according to the requirements of THSC, §401.106(a). The commission also retains the process for exempting a source of radiation or a kind of use or user from the application of a rule in Chapter 336 under §336.5(a).

§336.11. Memorandum of Understanding With the Texas Department of Health Regarding Radiation Control Functions.

The commission adopts the repeal of §336.11. Because of the changes in jurisdictional responsibilities established in SB 1604, the provisions of the Memorandum of Understanding (MOU) between the department and the commission regarding radiation control functions no longer reflect current law. The commission intends to work with the department to revise the MOU and propose it in a future rulemaking.

SUBCHAPTER B: RADIOACTIVE SUBSTANCE FEES.

§336.105. Schedule of Fees for Other Licenses.

The commission adopts amendments to §336.105(a) to reflect application fees for the regulation and licensing of source material recovery, by-product disposal, and the commercial storage and processing of radioactive substances. Licenses for source material recovery and by-product disposal will be subject to the requirements of new Subchapter L. Licenses for commercial radioactive substances processing and storage will be subject to the requirements of new Subchapter M.

The commission adopts amendments to §336.105(a)(4), to set application fees of $463,096 for conventional mining, $322,633 for in situ mining, $325,910 for heap leach, and $374,729 for disposal only for license applications received under Subchapter L for source material recovery and by-product disposal.

The commission adopts amendments to §336.105(a)(5), to set application fees of $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III for license applications received under Subchapter M for commercial radioactive substances storage and processing.

The commission adopts amendments to §336.105(b) to reflect annual license fees for the regulation and licensing of source material recovery, by-product disposal, and the commercial storage and processing of radioactive substances.

The commission adopts amendments to §336.105(b)(4) - (5), to set an annual licensing fee of $60,929.50 for facilities regulated under Subchapter L that are operational or are in closure.

The commission adopts amendments to §336.105(b)(6) to set annual licensing fees for facilities regulated under Subchapter L that are in post-closure. The fees are set as $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only.

The commission adopts amendments to §336.105(b)(7) - (9) to set additional multipliers and one-time fees related to licenses issued under Subchapter L for source material recovery and by-product disposal.

The commission adopts amendments to §336.105(b)(10) to set annual licensing fees for facilities regulated under Subchapter M. These fees are the same as the application fees for facilities regulated under Subchapter M in §336.105(a)(5).

The commission adopts amendments to §336.105(f) to reflect that under the provisions of SB 1604, the commission may assess and collect additional fees from the applicant to recover costs for an application to dispose of by-product material that was filed with the department on or before January 1, 2007. The commission recognizes that existing licensees were subject to a biennial licensing fee at the department. While the commission intends to establish a schedule for the payment of an annual licensing fee for both new and existing licensees, the commission does not expect a licensee to pay twice for coverage of the same year.

The commission adopts amendments to §336.105(g) to allow licensees which remitted a biennial fee to the department to remit the annual fee to the commission upon the expiration of the second year of coverage of the biennial fee.

SUBCHAPTER C: GENERAL LICENSING REQUIREMENTS.

The commission adopts amendments to the title of Subchapter C by changing the name from "General Disposal Requirements" to "General Licensing Requirements." Prior to SB 1604, the commission had responsibilities under the TRCA only for certain disposal activities. SB 1604 provides the TCEQ with additional regulatory and licensing responsibilities for source material recovery and commercial radioactive substances storage and processing. Subchapter C contains general provisions applicable to all licensing programs.

§336.201. Purpose and Scope.

The commission adopts amendments to §336.201 to reflect the statutory changes in SB 1604 that provide the commission authority to regulate the disposal of by-product material.

§336.203. License Required.

The commission adopts amendments to §336.203 to reflect the statutory changes in SB 1604 that provide the commission authority to establish exemptions under THSC, §401.106(a).

§336.207. General Requirements for Issuance of a License.

The commission adopts amendments to §336.207(1) to remove the word "disposal" to reflect that the commission regulates radioactive material activities in addition to disposal.

The commission adopts amendments to §336.207(4) to specify that the paragraph only applies to applications for a license under Subchapter H of Chapter 336 for commercial disposal of low-level radioactive waste.

§336.211. General Requirements for Radioactive Material Disposal.

The commission adopts amendments to §336.211(a)(1) to reflect that a licensee may dispose of licensed material at a facility licensed under Subchapter L for the disposal of by-product material.

The commission adopts amendments to §336.211(c) to reflect the change in regulatory responsibilities in SB 1604 for the commission's regulation and licensing of commercial radioactive substances processing and storage.

The commission adopts amendments to §336.211(d) to provide that the receipt, storage and/or processing at a licensed disposal facility for the explicit purpose of disposal must be regulated in accordance with the license authorizing disposal.

§336.213. Method of Obtaining Approval of Proposed Activities.

The commission adopts amendments to the title of this section by removing the words "disposal procedures" and replacing them with the word "activities" to reflect that the commission's licensing authority under Chapter 336 includes activities in addition to disposal.

The commission adopts amendments to §336.213(a) to provide that persons who intend to store or process radioactive substances from other persons or recover or process source material shall submit an application according to Chapter 305, Consolidated Permits. In response to comments, §336.213(a) was modified to remove a proposed reference to mining.

SUBCHAPTER G: DECOMMISSIONING STANDARDS.

The commission adopts amendments to Subchapter G to establish decommissioning standards for radioactive substances storage and processing facilities licensed under new Subchapter M, Licensing of Radioactive Substances Processing and Storage Facilities. Decommissioning requirements of storage and processing facilities will be required under Subchapter G in addi-

tion to the requirements of Subchapter M. Financial assurance for decommissioning of storage and processing facilities under Subchapter M will be subject to the financial assurance requirements of the Texas Department of State Health Services under adopted new §336.1235, Financial Assurance for Storage and Processing.

§336.601. Applicability.

The commission adopts amendments to §336.601(a) to apply the standards of Subchapter G to the decommissioning of radioactive substance storage and processing facilities. Financial assurance requirements for radioactive substance storage and processing facilities will be determined under the requirements of the Texas Department of State Health Services under §336.1235. In response to comments, §336.601(a) has been modified to remove the applicability of Subchapter G decommissioning requirements to licenses authorizing source material recovery or by-product disposal under Subchapter L. All decommissioning requirements for source material recovery or by-product disposal are included in Subchapter L.

§336.613. Additional Requirements.

The commission adopts amendments to §336.613(b) to include a reference to new §336.1211 so that applications for licenses authorizing the commercial storage and processing of radioactive substances under Subchapter M of Chapter 336 include a decommissioning plan under the requirements of Subchapter G of Chapter 336.

§336.619. Financial Assurance for Decommissioning.

The commission adopts amendments to §336.619(b) to include references to Subchapter K of Chapter 336 so that financial assurance is provided for decommissioning activities in the amount of the cost estimates provided in the decommissioning plan. In response to comments, §336.619(b) has been modified to remove the applicability of Subchapter G decommissioning requirements to licenses authorizing source material recovery or by-product disposal under Subchapter L. All decommissioning requirements for source material recovery or by-product disposal are included in Subchapter L. Section 336.619(a) has also been modified to indicate that financial assurance for storage and processing facilities licensed under Subchapter M are subject to the financial assurance requirements of the Texas Department of State Health Services under §336.1235. While decommissioning requirements and cost estimates for decommissioning of storage and processing facilities are addressed in Subchapter G, the existing Texas Department of State Health Services requirements for financial mechanisms will apply.

The commission adopts amendments to §336.619(c) to clarify that the decommissioning funding plan provided in the subsection only applies to inactive disposal sites licensed before January 1, 1998, and does not apply to new or existing licenses issued under Subchapters K and M of Chapter 336.

SUBCHAPTER L: LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES.

The commission adopts a new Subchapter L in Chapter 336 for the licensing of Source Material Recovery and By-product Material Disposal Facilities. The commission intends to transfer the requirements from the department's rules in 25 TAC §289.260 on uranium recovery and by-product disposal, format the rule into sections, and add clarification as appropriate. The commission intends to integrate the new Subchapter L licensing program into the commission's existing radioactive material program requirements for application processing, public notice, public participation, licensing fees, and enforcement. Therefore, references in 25 TAC §289.260 to the department's procedural requirements are replaced with the appropriate reference to the commission's procedures. The commission has modified the title of Subchapter L as proposed by changing "uranium" to "source material."

§336.1101. Purpose.

The commission adopts new §336.1101 to establish the purpose of Subchapter L, implementing the department's provisions in 25 TAC §289.260(a). The commission has modified the section as proposed by changing "uranium" to "source material." Source material includes uranium or thorium.

§336.1103. Scope.

The commission adopts new §336.1103 to establish the scope of the requirements of Subchapter L, implementing the department's provisions in 25 TAC §289.260(b). Subchapter L licensees are subject to Subchapters A - E, as applicable. Section 336.1103 has been modified from the proposal to remove the reference to Subchapter G. All decommissioning requirements for licenses under Subchapter L are addressed within Subchapter L.

§336.1105. Definitions.

The commission adopts new §336.1105 to establish definitions for Subchapter L, implementing the department's provisions in 25 TAC §289.260(c). In response to comment, the definition of "commencement of construction" in §336.1105(8) has been modified to indicate that the term does not include changes desirable for the temporary use of the land for public recreational uses. In response to comment, the definition of "existing portion" in §336.1105(12) has been modified to include "uranium or thorium" before the word "by-product." In response to comment, the definition of "Security" in §336.1105(26) has been modified to delete the word surety. "Security" has the same meaning as "financial assurance." In response to comments, the definition of "unrefined and unprocessed ore" in §336.1105(28) has been modified to remove the phrase "solution extracting."

§336.1107. Filing Application for Specific Licenses.

The commission adopts new §336.1107 to establish application requirements for a Subchapter L license, implementing the department's provisions in 25 TAC §289.260(d). An application for a license under Subchapter L is subject to the commission's license application requirements in §336.205, Application Requirements.

§336.1109. General Requirements for the Issuance of Specific Licenses.

The commission adopts new §336.1109 to establish general requirements for the issuance of specific licenses, implementing the department's provisions in 25 TAC §289.260(e). The commission revises the qualifications for the radiation safety officer to reflect recommendations from the Nuclear Regulatory Commission for minimum education and experience required for a radiation safety officer at a source material recovery or by-product material disposal facility, and these new requirements are consistent with the practice of the department.

§336.1111. Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities.

The commission adopts new §336.1111 to establish special requirements for a license application for source material recovery and by-product material disposal facilities, implementing the department's provisions in 25 TAC §289.260(f). The discussion of this section in the proposal preamble did not reflect the actual organization of the proposed rule. The proposal preamble described subsections using letters (a) - (c) while the actual rule language used numbered paragraphs (1) - (3). The adopted rules use only numbered paragraphs.

The commission has modified the title of the section that was proposed to substitute "source material" for "uranium."

The commission adopts new §336.1111(1)(G) to include the department's application requirement in 25 TAC §289.252(e)(7) for the submission of an operating, safety, and emergency procedures manual.

The commission adopts new §336.1111(1)(H) to include the department's application requirement in 25 TAC §289.252(e)(9) for landowner acknowledgment of licensed activities and the landowner's recognition that decommissioning may be required even if the licensee is unable or fails to perform required decommissioning. In response to comments, §336.1111(1)(H) has been modified to use the term "licensed site."

The commission adopts new §336.1111(2) to allow certain construction activities prior to the issuance of a license, implementing Section 33(l) of SB 1604. Under Section 33(l) of SB 1604, the applicant for a by-product disposal license that was filed with the department prior to January 1, 2007, may begin major construction related to the activities for which the license application was made at the time technical review has been made and an environmental analysis is prepared at its own risk and to the extent that such construction is not prohibited under federal law.

The commission adopts new §336.1111(3) with changes from the proposal. This change reflects compliance with applicable law regarding engineering, geoscience, or surveying information submitted in an application for a license. The existing requirement may have created confusion by only stating that facility drawings must be signed, sealed, and dated in accordance with the requirements of the Texas Board of Professional Engineers. The adopted provision in §336.1111(3) requires that all application materials be submitted in compliance with the applicable requirements of the Texas Engineering Practice Act, the Texas Geoscience Practice Act, and the Professional Land Surveying Practices Act.

§336.1113. Specific Terms and Conditions of Licenses.

The commission adopts new §336.1113 to establish specific terms and conditions of licenses, implementing the department's provisions in 25 TAC §289.260(g). The discussion of this section in the proposal preamble did not reflect the actual organization of the proposed rule. The proposal preamble described subsections using letters (a) - (j) while the actual rule language used numbered paragraphs (1) - (10). The adopted rules use only numbered paragraphs.

The commission adopts a reference in new §336.1113(3) to the commission's spill rules in 30 TAC Chapter 327. The reporting and response to spills of radioactive materials are covered under Chapter 336. Spills of non-radioactive materials are subject to the additional requirements of the Chapter 327. In response to comments, proposed §336.1113(4) requiring the review of financial qualifications was deleted because there will be an annual review of financial assurance. SB 1604 amended statutory requirements on the review of a applicant's financial qualifications. Before a license is issued or renewed, an applicant must demonstrate that the applicant is financially qualified to conduct licensed activities by providing adequate financial assurance. Financial assurance will be reviewed annually under the existing requirements of the Texas Department of State Health Services. Proposed §336.1113(5) - (10) have been renumbered as §336.1113(4) - (9). The commission adopts new §336.1113(4) - (9) to add standard terms to a license issued under Subchapter L. These new standard license provisions are similar to standard terms in all TCEQ issued permits, are similar to the license terms for commercial low-level radioactive disposal and Naturally Occurring Radioactive Material (NORM) disposal licenses issued under Subchapters H and K of Chapter 336, and are consistent with terms of licenses issued by the department.

§336.1115. Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

The commission adopts new §336.1115 to establish requirements for the expiration and termination of licenses and for the decommissioning of sites, separate buildings or outdoor areas, implementing the department's provisions in 25 TAC §289.260(h).

The commission adopts new §336.1115(a) to establish that licenses issued under Subchapter L may be issued for a term not to exceed ten years. The licenses issued by the department were subject to a two-year term. The department's requirements distinguished a two year administrative renewal from a ten-year technical renewal. Rather than implement both of these types of renewals, the commission adopts a ten-year license term. The expiration of a license does not relieve the licensee from the requirements of Chapter 336, including financial assurance and decommissioning obligations. In addition, the commission adopts application and annual fees in Subchapter B.

In response to comment, new §336.1115(e)(4) was added to require that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year as calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on the Radium Dose Approach." The NRC had previously raised this issue of compatibility with the department. Since it had not been addressed, the NRC reiterated the comment in their review of the commission's proposed rule.

§336.1117. Renewal of Licenses.

The commission adopts new §336.1117 to establish requirements for the renewal of a license issued under Subchapter L, implementing the department's provisions in 25 TAC §289.260(i). The department's rules include provisions for both a two-year administrative renewal and a ten-year technical renewal. Rather than implement both of these types of renewals, the commission adopts a ten-year renewal term.

§336.1119. Amendment of Licenses at Request of Licensee.

The commission adopts new §336.1119 to establish requirements for amendment applications for a license issued under Subchapter L, implementing the department's provisions in 25 TAC §289.260(j).

§336.1121. Agency Action of Applications to Renew or Amend.

The commission adopts new §336.1121 to establish requirements for considering applications to amend or renew licenses

issued under Subchapter L, implementing the department's provisions in 25 TAC §289.260(k).

§336.1123. Transfer of Material.

The commission adopts new §336.1123 to establish requirements for transferring radioactive materials, implementing the department's provisions in 25 TAC §289.260(l).

§336.1125. Financial Security Requirements.

The commission adopts new §336.1125 to establish requirements for financial security.

The commission has modified this section from proposal. The commission had proposed specific financial assurance requirements for both existing licensees subject to the SB 1604 transfer, pending applications and future licensees. In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289, Radiation Control. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 until the commission adopts other rules on financial assurance. Section 336.1125 maintains the requirements to have financial assurance and determining the appropriate amount of financial assurance coverage under the requirements of Subchapter L, while using the Texas Department of State Health Services rules for the specific requirements of financial assurance mechanisms.

§336.1127. Long-term Care and Maintenance Requirements.

The commission adopts new §336.1127 to establish requirements for long-term care and maintenance of facilities licensed under Subchapter L, implementing the department's provisions in 25 TAC §289.260(n).

The commission adopts new §336.1127(c), to change the assumed real interest rate from 1% to 2%, consistent with the assumed real interest rate, above inflation, of 2%, used for the funding for institutional control for the low-level radioactive waste disposal license in Subchapter H.

§336.1129. Technical Requirements.

The commission adopts new §336.1129 to establish technical requirements for facilities licensed under Subchapter L, implementing the department's provisions in 25 TAC §289.260(o). In response to comment, §336.1129(i)(1) has been modified to add "uranium or thorium" before "by-product."

§336.1131. Land Ownership of By-product Material Disposal Sites.

The commission adopts new §336.1131 to establish requirements for land ownership of by-product material disposal sites, implementing the department's provisions in 25 TAC §289.260(p).

§336.1133. Maximum Values for Use in Groundwater Protection.

The commission adopts new §336.1133 to establish values for concentrations of certain constituents for use in groundwater protection, implementing the department's provisions in 25 TAC §289.260(q).

§336.1135. Construction Activities.

The commission adopts new §336.1135 to establish requirements for construction activities that may occur at a proposed facility before a license is issued under Subchapter L, implementing Section 33(l) of SB 1604. In response to comments, §336.1135 was modified to provide that the section only applies to applications for licenses authorizing by-product disposal that were submitted to the department on or before January 1, 2007.

SUBCHAPTER M: LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES.

The commission adopts a new Subchapter M in Chapter 336 for the licensing of Radioactive Substances Processing and Storage Facilities. The commission intends to transfer the technical requirements from the department's rules in 25 TAC §289.254 for commercial storage and processing, format the rule into sections, and add clarification as appropriate. The commission intends to integrate the new Subchapter M licensing program into the commission's existing radioactive material program requirements for application processing, public notice, public participation, licensing fees, and enforcement. Therefore, references in 25 TAC §289.254 to the department's procedural requirements are replaced with the appropriate reference to the commission's procedures. Throughout the subchapter, the term "radioactive substance" has been substituted for "radioactive waste" to reflect the definition of radioactive substance provided in the TRCA.

§336.1201. Purpose and Scope.

The commission adopts new §336.1201 to establish the purpose and scope of the requirements of Subchapter M for commercial radioactive substances storage and processing, implementing the department's provisions in 25 TAC §289.254(a).

§336.1203. Definitions.

The commission adopts new §336.1203 to establish definitions for Subchapter M, implementing the department's provisions in 25 TAC §289.254(b).

§336.1205. Activities Requiring License.

The commission adopts new §336.1205 to establish that a license or exemption under Subchapter M is required before a person may receive, possess, store, or process radioactive substances from other persons.

§336.1207. Radioactive Substances Processing and Storage Facility Classification.

The commission adopts new §336.1207 to establish classifications for radioactive substances processing and storage facilities, implementing the department's provisions in 25 TAC §289.254(d).

§336.1209. Exemptions.

The commission adopts new §336.1209 to establish exemptions for radioactive substances processing and storage, implementing the department's provisions in 25 TAC §289.254(e).

§336.1211. Filing Application for a Specific License.

The commission adopts new §336.1211 to establish requirements for the submission of an application for a license under

Subchapter M, implementing the department's provisions in 25 TAC §289.254(f).

The commission adopts new §336.1211(4)(T) to include the department's application requirement in 25 TAC §289.252(e)(7) for the submission of an operating, radiation safety, and emergency procedures manual.

The commission adopts new §336.1211(4)(U) to include the department's application requirement in 25 TAC §289.252(e)(9) for landowner acknowledgment of licensed activities and the landowner's recognition that decommissioning may be required even if the licensee is unable or fails to perform required decommissioning.

§336.1213. Additional Environmental Requirements.

The commission adopts new §336.1213 to establish additional requirements for a storage and processing facility, implementing the department's provisions in 25 TAC §289.254(g). In response to comments, the proposed language applying the requirements of the section only to Class III facilities was removed so that the section applies to all storage and processing facilities.

§336.1215. Issuance of Licenses.

The commission adopts new §336.1215 to establish requirements for the issuance of a license under Subchapter M, implementing the department's provisions in 25 TAC §289.254(h). The commission also adopts the minimum qualifications for the radiation safety officer required for radioactive substances storage and processing facilities which are consistent with the practice of the department for approving radiation safety officer designations at licensed facilities.

§336.1217. Commencement of Major Construction.

The commission adopts new §336.1217 to prohibit major construction until a license has been issued by the commission. License applications under Subchapter M are not subject to the pre-licensing construction authorization provided in Section 33(l) of SB 1604.

§336.1219. Commencement of Operations.

The commission adopts new §336.1219 to prohibit operations until a license has been issued and the licensee has obtained all licenses or permits required from other agencies, implementing the department's provisions in 25 TAC §289.254(j).

§336.1221. Specific Terms and Conditions of Licenses.

The commission adopts new §336.1221 to establish specific license terms and conditions for a license issued under Subchapter M, implementing the department's provisions in 25 TAC §289.254(k). The discussion of this section in the proposal preamble did not reflect the actual organization of the proposed rule. The proposal preamble described paragraphs using numbers (1) - (10) while the actual rule language used lettered subsections (a) - (c). The adopted rules use lettered subsections.

The commission adopts new §336.1221(b) and (c) to establish the specific license terms required by the department's provisions in 25 TAC §289.252(w)(2) and (x)(3).

§336.1223. Renewal of Licenses.

The commission adopts new §336.1223 to establish requirements for the renewal of a license under Subchapter M, implementing the department's provisions in 25 TAC §289.254(l). The department's licensing program distinguished a two-year administrative renewal from a ten-year technical renewal. Rather than implement both of these types of renewals, the commission adopts a ten-year license period.

§336.1225. Amendment of License at Request of Licensee.

The commission adopts new §336.1225 to establish requirements for amendment of licenses under Subchapter M, implementing the department's provisions in 25 TAC §289.254(m).

§336.1227. Radioactive Substances Processing and Packaging Requirements.

The commission adopts new §336.1227 to establish requirements for radioactive substances processing and packaging, implementing the department's provisions in 25 TAC §289.254(n).

§336.1229. Environmental Assessment.

The commission adopts new §336.1229 to establish requirements for an environmental assessment for a license under Subchapter M, implementing the department's provisions in 25 TAC §289.254(o).

§336.1231. Radioactive Substances Processing and Storage Categories of Radionuclides.

The commission adopts new §336.1231 to establish categories of radionuclides for radioactive substances and processing under Subchapter M, implementing the department's provisions in 25 TAC §289.254(p).

§336.1233. Radiation Safety Committee.

The commission adopts new §336.1233 to establish requirements for a radiation safety committee, implementing the department's provisions in 25 TAC §289.252(g).

§336.1235. Financial Assurance for Storage and Processing.

The commission adopts new §336.1235 to establish financial assurance requirements for facilities licensed under Subchapter M. Decommissioning and the requirement to have financial assurance for decommissioning of facilities licensed under Subchapter M are required under the provisions of Subchapter G of Chapter 336.

The commission has modified this section from proposal. The commission had proposed specific financial assurance requirements for both existing licensees subject to the SB 1604 transfer, pending applications and future licensees. In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1235 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under §336.1235, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter M of Chapter 336 until the commission adopts other rules on financial assurance.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to

§2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 336 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because there are no significant requirements added to radioactive substance disposal facilities, source material recovery facilities, or commercial radioactive substances storage and processing facilities. The rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the department to the commission. The rulemaking in Chapter 336 transfers the technical requirements for these licensing programs from the department's existing rules to the commission's rules. The rulemaking also integrates the transferring license programs into existing commission procedural requirements in Chapters 39 and 281.

Furthermore, the rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency. THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The rules do not exceed the standards set by federal law.

The rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements for the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The purpose of the rulemaking is to implement statutory requirements consistent with recent amendments to THSC, Chapter 401, as provided in SB 1604.

The rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended,* NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The rules do not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

These rules are adopted under specific authority of THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances.

The commission invited public comment of the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated rulemaking action and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these rules. These rules implement SB 1604, transferring certain regulatory responsibilities for the control of radioactive material from the department to the commission. This rulemaking is reasonably taken to fulfill an obligation required by federal law for the control of radioactive material, which is an exempt action under Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these rules and performed an assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these rules is to implement changes to the TRCA required by SB 1604, 80th Legislature, 2007 for the regulation and licensing of the disposal of radioactive substances, recovery of source material, and commercial radioactive substances processing and storage. The rules would substantially advance this purpose by transferring department requirements into commission rules to conform to the new statutory designation of jurisdiction.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. The rules do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The rules implement SB 1604 which changes the state agency responsible for oversight of certain activities under the TRCA. The rules do not change the existing technical requirements that were in place under the department's program. Therefore, the commission's rules do not affect real property in a manner that is different than may have been affected under the department's requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking action and determined that the rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act

Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the rulemaking action is not subject to the CMP.

PUBLIC COMMENT

The commission held a public hearing on September 25, 2007. The comment period closed on October 15, 2007. Comments were received from Mesteña Uranium, L.L.C. (Mesteña); the Lone Star Chapter of the Sierra Club (Sierra Club); the Uranium Committee of the Texas Mining and Reclamation Association (TMRA); Kelly Hart & Hallman LLP on behalf of Uranium Energy Corp., AREVA NC, Inc., and Uranerz Energy Corporation (UAU); Hance Scarborough Wright Woodward & Weisbart on behalf of Waste Control Specialists LLC (WCS); the Texas Radiation Advisory Board (TRAB), and the United States Nuclear Regulatory Commission (NRC). Mesteña supports the revisions as necessary for the orderly and complete program transfer of the radioactive materials programs that oversee uranium recovery operations. The Sierra Club commented that the Sierra Club is pleased with the proposed rules overall and that the proposed rules adequately implement the statutory changes made by SB 1604. TMRA commented on its appreciation of the time and effort the TCEQ has put forth as part of the rulemaking process. Specific comments are addressed below.

RESPONSE TO COMMENTS

Scope and General Provisions

Mesteña and TMRA commented that the revision to §336.1(a) should not include a reference to mining because mining is not a licensed activity under the NRC program and that mining in Texas is regulated by the Railroad Commission of Texas.

The commission agrees with the comment. The addition of references to "mining" in the proposed rules was intended only to provide explanation to the public who may not be familiar with the term "recovery" as applied to radioactive materials. Section 336.1(a) has been modified in response to comment to remove the term "mine."

Radioactive Substance Fees

The Sierra Club expressed support for the proposed fees and stated that the commission should keep audited records of the amount of time and resources devoted to license applications so that fees can be adjusted as needed.

The commission appreciates the comment. The commission has a process in place to track, document, assess, and invoice for the cost of administering regulatory activities associated with specific application reviews and other licensing actions. No changes were made in response to this comment.

WCS commented that §336.105(f) should be revised because SB 1604 only authorizes the recovery of the commission's costs for conducting the technical review of the application and does not allow the commission to recover costs from an applicant for the administrative review and contested case hearings.

The commission disagrees with the comment. THSC, §401.412 specifically states that: "The commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter." The costs associated with the entire application review and costs related to a contested case hearing would be part of administering the commission's authority to regulate the transferred programs. Senate Bill 1604, Section 33(h) also states that: "The commission may assess and collect additional fees from an applicant affected by performance under a contract under this subsection to recover the commission's contracting costs." If contractors were needed as witnesses for a contested case hearing, then the commission would incur costs under a contract, which would be recoverable under this provision. Although SB 1604, Section 33(k)(2) provides specific direction on the technical review of applications affected by the transfer, it does not negate the other cost recovery provisions provided in the THSC and elsewhere in SB 1604. No changes were made in response to this comment.

General Licensing Requirements

WCS agrees with the change to §336.207(4) to specify that the land ownership requirements of the paragraph apply only to an application for the commercial disposal of low-level radioactive waste.

The commission appreciates the comment. No changes were made in response to this comment.

Method of Obtaining Approval of Proposed Activities

TMRA comments that §336.213(a) uses the term "process" in two different ways and requests definition of the term "process."

The commission appreciates the comment. The first use of the term "process" in §336.213(a) has the same definition as used in §336.1203 and means storage, extraction of materials, transfer, volume reduction, compaction, incineration, solidification, or other separation and preparation of radioactive substances from other persons for reuse or disposal, including any treatment or activity that renders waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal. The second use of the term has the same definition as provided in THSC, §401.261(2) and means the possession, use, storage, extraction of material, transfer, volume reduction, compaction or other separation incidental to recovery of source material. No changes were made in response to this comment.

Applicability of Subchapter G

Mesteña and TMRA request clarification on the applicability of Subchapter G to the decommissioning of facilities licensed under Subchapter L. Mesteña also requests definition of the term "ancillary facilities." WCS commented that uranium recovery and by-product disposal licensees are subject to the decommissioning requirements of Subchapter L and not the requirements of Subchapter G.

The commission agrees with the comments. All decommissioning requirements for licenses under Subchapter L are covered in Subchapter L. Sections 336.601 and 336.619 have been modified to remove the applicability of Subchapter G decommissioning requirements to licenses authorizing source material recovery or by-product disposal under Subchapter L.

Licensing of Source Material Recovery and By-product Disposal Activity

WCS comments that Subchapter L of Chapter 336 directly relates to the technical requirements for the licensing of by-product disposal and that SB 1604 requires that the commission rules must mirror the existing department regulations for the licensing of by-product disposal.

The commission disagrees with the comment. SB 1604 does not provide that the commission must adopt rules that mirror the existing department regulations. SB 1604, Section 33(d) as a

whole, provides that the legislation itself maintains the status quo with respect to any act, obligation, right, license, permit, requirement, or penalty because of the transfer of the jurisdiction over the regulatory program from the department to the commission. The commission is required to continue proceedings of the department related to programs transferred under SB 1604. And, under the third sentence of SB 1604, Section 33(d), "a rule of the Health and Human Services Commission or the Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by this Act is enforceable as a rule of the Texas Commission on Environmental Quality *until the Texas Commission on Environmental Quality adopts other rules"* (emphasis added). THSC, §401.011(b) and Section 33(c) of SB 1604 provide the commission full responsibility for the administration and enforcement of laws related to licensing of the disposal of radioactive substances, the processing or storage of low-level radioactive waste or non oil and gas naturally occurring radioactive materials, the recovery or processing of source material, the processing of by-product material, and sites for the disposal of radioactive substances. The commission has the authority to adopt these rules, including some changes from department requirements. Section 33(k)(1) of SB 1604 does provide that an application for a license to dispose of by-product material that was filed with the department prior to January 1, 2007 shall be processed by the commission and governed by the technical rules and regulations of the department that were effective on the effective date of SB 1604. The commission does not agree that all of the department's provisions in 25 TAC §289.260 and Subchapter L are technical requirements. The commission has implemented the technical requirements in §336.1129. As explained throughout this rulemaking process, it is the commission's intent to implement the technical requirements for the transferred programs and integrate the programs into existing commission requirements for public participation, application processing, and enforcement. No changes were made in response to this comment.

Definitions

The NRC comments that the definition of "commencement of construction" in §336.1105(8) needs to include the phrase "but does not include changes desirable for the temporary use of the land for public recreational uses" to maintain compatibility with the NRC's definition in 40 Code of Federal Regulations (CFR) §40.4.

The commission agrees with the comment and has modified §336.1105(8) to include the phrase "but does not include changes desirable for the temporary use of the land for public recreational uses."

The NRC comments that the definition of "existing portion" in §336.1105(12) needs to include the phrase "uranium or thorium" before "by-product materials" to maintain compatibility with the NRC's definitions in 10 CFR Part 40 Appendix A.

The commission agrees with the comment and has modified §336.1105(12) to include "uranium or thorium" before "by-product materials."

TMRA requests clarification on the definition of "licensed site" in §336.1105(18) and requests reconciliation with the term "facility" in Subchapter T of Chapter 37. TMRA also commented that "contiguous" and "ancillary" are not defined.

The commission appreciates the comment. "Licensed site" has the same meaning as the same term in the NRC's rules in 10 CFR Part 40, Appendix A. The requirements of Subchapter L cover the activities requiring financial assurance. Contiguous means all land within a site boundary, as defined in §336.2(124), that is owned, leased, or otherwise controlled by the licensee. Ancillary is used in Subchapter G of Chapter 336. In response to comments, Subchapters G and L have been modified to provide that all decommissioning requirements for licenses under Subchapter L are covered in Subchapter L. Ancillary means auxiliary. In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1135 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 until the commission adopts other rules on financial assurance. No changes were made in response to these comments.

Mesteña and TMRA comment that definition of "security" in §336.1105(26) includes a parenthetical reference to "surety." Mesteña also comments the definition of "security" states that it is the same as "financial assurance," but "financial assurance" is defined in the rule.

The commission appreciates the comment. The parenthetical reference to surety has been deleted in the adopted rule. "Financial assurance" and "financial security" have the same meaning and may be used interchangeably in commission rules.

The NRC comments that the definition of "unrefined and unprocessed ore" in §336.1105(28) needs to be amended by removing the phrase "solution extracting" to maintain compatibility with the NRC's definition in 40 CFR §40.4.

The commission appreciates the comment. The phrase "solution extracting" has been removed from the definition of "unrefined and unprocessed ore" in §336.1105(28) to remain compatible with the NRC's definition in 40 CFR §40.4.

General Requirements for the Issuance of Specific Licenses

Mesteña comments that the rule change substantially increases the education and training requirements for the radiation safety officer and is consistent with U.S. Nuclear Regulatory Commission Regulatory Guidance 8.31.

The commission appreciates the comment. No changes were made in response to the comment.

WCS commented that §336.1109 should be modified to substitute the word "will" for "may" to provide that a license application will be approved if the agency determines the applicant has met certain requirements because the department's rules used the word "will."

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an applicant submits all information required under the radioactive substance rules but the application would not be approved for other reasons. For example, the commission could decide not to approve an application in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's

failure to pay fees, or by court order. No changes were made in response to this comment.

Special Requirements for a License Application for Uranium Recovery and By-product Disposal Facilities

The Sierra Club supports the proposed language in §336.1111(2) on pre-license construction that provides that such construction is at the applicant's own risk because it makes it clear that the construction will not influence the licensing decision by the executive director.

The commission agrees with the comment. No changes were made in response to the comment.

WCS commented that §336.1111 should be modified to substitute the word "will" for "may" to provide that a license will be issued if the applicant meets the requirements in the rule because the department's rules used the word "will."

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an applicant meets all the requirements under this rule but the license would not be issued for other reasons. For example, the commission could decide not to issue a license in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's failure to pay fees, or by court order. No changes were made in response to this comment.

TMRA questions whether the requirement in §336.1111(1)(G) for an adequate operating, radiation safety, and emergency response procedures manual is the same as the safety evaluation report and if so, this new requirement is not a concern for TMRA. WCS comments that §336.1111(1)(G) should be deleted because it is not required in the department rules.

The commission disagrees with the comments. This procedures manual was required by the department in 25 TAC §289.252(e)(7) for licenses authorizing source material recovery or by-product disposal. The operations, radiation safety, and emergency response procedures manual is not the same as the safety evaluation report and is not a new requirement. The manual includes the procedures used by applicant or licensee in carrying out its licensed activities. No changes were made in response to this comment.

TMRA questions how the term "site" used in §336.1111(1)(H) compares with the term "facility" and "ancillary facilities" used elsewhere in Chapter 336.

The commission appreciates the comment. In response to the comment, §336.1111(1)(H) has been modified to use the term "licensed site" which has the meaning defined in §336.1105(18). The term "ancillary facilities" is used in Subchapter G of Chapter 336 and is not applicable to decommissioning under Subchapter L. No changes were made in response to this comment.

WCS comments that §336.1111(1)(H) should be deleted because it was not a requirement in department rules.

The commission disagrees with the comments. The requirement for landowner acknowledgment of licensed activities is based on the existing requirement in 25 TAC §289.252(e)(9) and is applicable to license applications authorizing source material recovery and by-product disposal. No changes were made in response to this comment.

Specific Terms and Conditions of Licenses

The Sierra Club commented that proposed §336.1113(2) should be modified so that a licensee is required to report any release that extends beyond the license boundary, whether or not it exceeds the concentration for water listed in Table II, Column 2 of §336.359.

The commission disagrees with the comment. The constituent concentration values in Table II, Column 2 of §336.359 are applicable to the assessment of doses to the public. As such, the constituent concentrations in Column 2 control doses to the public at 50 mrem per year, and have a built-in safety factor because the public dose limit is 100 mrem per year. No changes were made in response to the comment.

Mesteña commented that proposed §336.1113(3) included an incorrect reference to Chapter 327, Spill Prevention and Control.

The commission appreciates the comment. The preamble of the proposed rules included an incorrect citation to Chapter 327, Spill Prevention and Control. The proposed rule language had the correct citation. The language in the preamble has been corrected, and the correct citation is Chapter 327, Spill Prevention and Control. No changes were made in response to comment.

Mesteña and TMRA comment that proposed §336.1113(4) requires a licensee to submit evidence of financial qualifications when Section 5 of SB 1604 amended THSC, §401.108 to provide that evidence of financial assurance shall be proof of financial qualifications. The Sierra Club commented that proposed §336.1113(4) creates confusion with requirements for annual review of financial assurance.

The commission agrees with the comments. SB 1604 modified the statutory requirements for consideration of financial qualifications so that the financial qualifications of an applicant or licensee are determined by providing acceptable financial assurance. Financial assurance will be reviewed annually under the existing requirements of the Texas Department of State Health Services. Section 336.1113 has been modified in response to these comments to remove §336.1113(4). The rest of the section will be renumbered accordingly.

WCS commented that proposed §336.1113(5) - (10) should be deleted because these provisions were not included in department rules.

The commission disagrees with the comment. Because proposed §336.1113(4) was deleted in response to comments, proposed §336.1113(5) - (10) is adopted as §336.1113(4) - (9). Section 336.1113(4) - (9) is standard licensing requirements applicable to the other types of licenses issued under Chapter 336 and is consistent with requirements of the department or SB 1604. Section 336.1113(4) is a department requirement in 25 TAC §289.252(w)(3) that applies to licenses authorizing source material recovery or by-product disposal. Section 336.1113(5) is a department requirement in 25 TAC §289.252(x)(1) that applies to licenses authorizing source material recovery or by-product disposal. Section 336.1113(6) is a department requirement in 25 TAC §289.252(d)(10) that applies to licenses authorizing source material recovery or by-product disposal. Section 336.1113(7) is a department requirement in 25 TAC §289.252(x)(3) that applies to licenses authorizing source material recovery or by-product disposal. Section 336.1113(8), requiring executive director inspection and review of construction is authorized under Section 33(l) of SB 1604 which allows the commission to oversee the construction by a license applicant prior to license issuance. The provision on financial assurance in §336.1113(8) is consistent with the department's requirement to have acceptable financial

assurance in place prior to commencement of operations in 25 TAC §289.260(m). Section 336.1113(9) is a department requirement in 25 TAC §289.252(w)(2) that applies to licenses authorizing source material recovery or by-product disposal. No changes were made in response to this comment.

TMRA commented that §336.1113 imposes a number of new license conditions under §305.125 on uranium recovery licenses and asks for the legal basis to impose new permit conditions on such licenses.

The commission appreciates the comment. The standard permit provisions of §305.125 are boiler-plate provisions that apply to many commission-issued permits. The commission has the authority to adopt rules to implement these conditions on licenses authorized under Subchapter L. THSC, §401.011(b) and Section 33(c) of SB 1604 provide the commission full responsibility for the administration and enforcement of laws related to licensing of the disposal of radioactive substances, the processing or storage of low-level radioactive waste or non oil and gas naturally occurring radioactive materials, the recovery or processing of source material, the processing of by-product material, and sites for the disposal of radioactive substances. Under Section 33 (d) of SB 1604, "a rule of the Health and Human Services Commission or the Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by this Act is enforceable as a rule of the Texas Commission on Environmental Quality until the Texas Commission on Environmental Quality adopts other rules." Thus, the Texas Radiation and Control Act as amended by SB 1604, provides the commission with the authority to adopt rules and establish license conditions to protect occupational health and safety, public health and safety, and the environment. No changes were made in response to this comment.

Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

WCS commented that §336.1115(e)(3)(B) should be modified to include the phrase "so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year" to match the department's rule relating to the concentration of natural uranium in soil. The NRC commented that §336.1115 needs to address the event that dose to a member of the public exceeds the 100 mrem limit. The comment had previously been submitted to the department, and the NRC reiterates the comment for the commission's rules.

The commission appreciates the comments. New §336.1115(e)(4) was added to require that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year as calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on the Radium Dose Approach."

Renewal of Licenses

WCS commented that §336.1117(c) should be modified to substitute the word "will" for "may" to provide that an application for renewal will be approved if certain requirements are satisfied because the department's rule used the word "will."

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an application for renewal meets all the requirements under this rule but the license would not be issued for other reasons. For example, the commission could decide to not issue a renewed license in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's failure to pay fees, or by court order. No changes were made in response to this comment.

Transfer of Material

The Sierra Club commented that §336.1123(d)(3) should be deleted so that there can be no oral certification of the verification that a transferee is authorized for the receipt, type, form and quantity of waste received for emergency shipments of radioactive material.

The commission disagrees with the comment. The provision in §336.1123(d)(3) is an NRC requirement in 10 CFR §40.51(c). This provision is required for compatibility as an Agreement State with the NRC. The state is required to maintain the essential objectives of this program element to avoid conflicts, duplication, or gaps with the NRC's regulatory program. The commission notes that this provision addresses emergency situations only and expects to be informed on the status of any emergency situation to ensure that radioactive materials transferred are appropriately received. No changes were made in response to this comment.

Financial Security Requirements

WCS comments that §336.1125(a) should be modified to match department rules to provide that financial security for decontamination, decommissioning, reclamation, disposal, and other requirements be established prior to the commencement of operations rather than 60 days prior to the receipt or possession of radioactive substances.

In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under adopted §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 until the commission adopts other rules on financial assurance.

WCS comments that §336.1125(f) should be modified to substitute "should" for "must" as stated in department rules to provide that the amount of financial assurance should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under adopted §336.1125, the

commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 the commission adopts other rules on financial assurance.

WCS commented that the last two sentences of §336.1125(f) requiring an annual submission of a cost estimate report and updated financial assurance are more stringent provisions than the three-year review provision required by the Nuclear Regulatory Commission in 10 CFR §40.36(4)(d) and should be deleted because the department rules did not include such provisions. Alternatively, WCS recommends that §336.1125(f) should be modified to allow the submittal of the cost estimate report to occur at a definitive date in the calendar year as determined by renewal of the parent company guarantee that must be authorized as an available financial assurance mechanism under Chapter 37, Subchapter T.

In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under adopted §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 the commission adopts other rules on financial assurance.

WCS commented that §336.1125(g) should match the wording of 25 TAC §289.260(m)(7) for the term and renewal of the financial assurance mechanism.

In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under adopted §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 the commission adopts other rules on financial assurance.

WCS commented that the financial test should be retained as an available financial assurance mechanism for licenses issued under Subchapter L or M. WCS commented that §336.1125(i) should be deleted because the parent company guarantee allowed under department rules must be an available financial assurance mechanism under commission rules. WCS commented that a licensee that is allowed to use a parent company guarantee under department rules would be severely and detrimentally affected by a commission change that would not allow the use of the parent company guarantee.

The commission agrees that the parent company guarantee was an option available under the department rules.

In light of comments received on financial assurance requirements, the commission has decided to address specific financial assurance requirements in future rulemaking. The commission adopts §336.1125 to provide that financial assurance must be provided in accordance with the requirements of the Texas Department of State Health Services in 25 TAC Chapter 289. Under Section 33(d) of SB 1604, a rule of the Texas Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by SB 1604 is enforceable as a rule of the Texas Commission on Environmental Quality until the commission adopts other rules. Under adopted §336.1125, the commission will continue to use the applicable rules of the Texas Department of State Health Services for financial assurance for a license or application under Subchapter L of Chapter 336 the commission adopts other rules on financial assurance.

Technical Requirements

The NRC commented that the groundwater protection standard in §336.1129(i) should apply to "uranium or thorium" by-product material to maintain compatibility with the NRC's groundwater protection requirements in 10 CFR Part 40 Appendix A, Criterion 5.

The commission appreciates the comment. Section 336.1129(i) has been modified to add "uranium or thorium" before "by-product."

WCS commented that §336.1129(i)(3) should be modified to replace the word "may" with the word "will" as stated in department rules so that an applicant or licensee will be exempted from the requirements of the groundwater protection standards if certain findings are made.

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an application for the exemption from the requirements for groundwater protection meet all the requirements under this rule but the application would not be approved for other reasons. For example, the commission could decide not to approve such an application in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's failure to pay fees, or by court order. No changes were made in response to this comment.

WCS commented that §336.1129(j)(8) should be modified to replace the word "may" with the word "will" as stated in department rules so that the agency will establish a site-specific alternate concentration limit for a hazardous constituent if certain findings are made.

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an application to establish site-specific alternate concentrations meets all the requirements under this rule but the application would not be approved for other reasons. For example, the commission could decide to not approve an application in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's failure to pay fees, or by court order. No changes were made in response to this comment.

The Sierra Club commented that §336.1129(h)(2) should not include a specific exemption into the rule, but rather, an applicant should have to prove any proposed deviations from a baseline requirement, such as the requirement to have rock covering of

slopes, are not necessary to isolate waste and protect the facility from erosion potential.

The commission disagrees with the comment. Section 336.1129(h)(2) requires that topographic features provide good wind protection. Vegetative cover is preferred under §336.1129(h)(4) but rock cover is identified as an alternative if vegetative cover cannot be self-sustaining under §336.1129(h)(5). These provisions are maintained for compatibility with the NRC's requirements in 10 CFR Part 40, Appendix A, Criterion 4. The use of an alternate design as provided in this instance is not an "exemption" from the applicability of a rule as contemplated in §336.5. The commission made no changes in response to this comment.

The Sierra Club commented that the 18-month period allowed for the implementation of a corrective action program in §336.1129(k) is too long. The Sierra Club recommends a maximum of 9 months to develop and implement a corrective action program for documented evidence of groundwater contamination.

The commission disagrees with the comment. The 18-month period allowed for the implementation of a corrective action program is based on NRC requirements in 10 CFR Part 40, Appendix A. This provision is required for compatibility as an Agreement State with the NRC. The state is required to maintain the essential objectives of this program element to avoid conflicts, duplication, or gaps with the NRC's regulatory program. No changes were made in response to the comment.

Construction Activities

TMRA requests clarification on the type of activities and facilities that must comply with the requirements of §336.1135.

The commission appreciates the comment. Section 336.1135 has been modified in response to this comment to provide that the pre-license construction provisions only apply to applications for by-product disposal that were submitted to the department on or before January 1, 2007. The Texas Radiation Control Act generally prohibits pre-license construction activities, but Section 33(l) of SB 1604 specifically authorized the construction as provided in §336.1135 to the extent that it is not prohibited under federal law.

Licensing of Radioactive Substances Processing and Storage Facilities

Filing an Application for a Specific License

WCS commented that §336.1211(4)(T) and (4)(U) should be deleted because these provisions are new requirements for radioactive substances storage and processing applications that are not required in department rules.

The commission does not agree with the comment. Section 336.1211(4)(T) and (4)(U) is not a new requirements. The operating, safety and emergency procedures manual is required by the department for radioactive substances storage and processing facilities in 25 TAC §289.252(e)(7). The certification from the owners of the real property on which the radioactive substances are stored is required by the department in 25 TAC §289.252(e)(9). No changes were made in response to this comment.

Additional Requirements for Class III Facilities

The Sierra Club commented that the requirements of §336.1213 should apply to all Subchapter M facilities, not just Class III storage and processing facilities.

The commission agrees with the comment and has modified §336.1213 to apply to all license applications under Subchapter M.

Issuance of Licenses

WCS commented that §336.1215(a) should be modified to replace the word "may" with the word "will" as stated in department rules so that a license for a radioactive substances processing or storage facilities will be issued if the agency finds reasonable assurance that certain requirements are met.

The commission does not agree with the comment. The use of the word "may" is appropriate because there may be instances where an applicant meets all the requirements under this rule but the license would not be issued for other reasons. For example, the commission could decide not to issue a license in consideration of the applicant's compliance history, the applicant's failure to comply with public notice or other procedural requirements, the applicant's failure to pay fees, or by court order. No changes were made in response to this comment.

WCS commends the TCEQ for the new requirements in §336.1215(a)(5) related to the qualifications of the radiation safety officer.

The commission appreciates the comment. No changes were made in response to the comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.1, §336.5

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendments are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances; all persons who recover or process source material; and all persons who receive radioactive substances from other persons for storage or processing.

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter, to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices that produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to 10 Code of Federal Regulations Part 150 (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this commission.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, by-product material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Commission on Environmental Quality (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, except as authorized under §336.501(b) of this title (relating to Scope and General Provisions);

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a person specifically licensed for the disposal of low-level radioactive waste;

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228;

(4) dispose of radioactive materials from other persons other than low-level radioactive waste, except for naturally occurring radioactive material waste in accordance with Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems);

(5) recover or process source material, except in accordance with Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities);

(6) store, process, or dispose of by-product material, except in accordance with Subchapter L of this chapter; or

(7) receive radioactive substances from other persons for storage or processing, except in accordance with Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §336.11

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The repeal is also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted repeal implements the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.105

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendment is also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000;

(3) facilities regulated under Subchapter K of this chapter: $50,000;

(4) facilities regulated under Subchapter L of this chapter: $463,096 for conventional mining; $322,633 for in situ mining; $325,910 for heap leach; and $374,729 for disposal only; or

(5) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapter F, Subchapter G, Subchapter K, Subchapter L, and Subchapter M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000;

(2) facilities regulated under Subchapter G of this chapter: $8,400;

(3) facilities regulated under Subchapter K of this chapter: $25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: $60,929.50;

(5) facilities regulated under Subchapter L of this chapter that are in closure: $60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) $28,658 for in situ wellfield on noncontiguous property;

(B) $71,651 for in situ satellite;

(C) $11,235 for wellfield on contiguous property;

(D) $50,756 for non-vacuum dryer; or

(E) $71, 651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, Subchapter G, or Subchapter K of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F or Subchapter K of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F or Subchapter K of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For an application to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §§336.201, 336.203, 336.207, 336.211, 336.213

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendments are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Au-

thority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.211. General Requirements for Radioactive Material Disposal.

(a) Unless otherwise exempted, a licensee may dispose of licensed material, as appropriate to the type of licensed material, only:

(1) by transfer to an authorized recipient as provided in §336.331(g) and (h) of this title (relating to Transfer of Radioactive Material), Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), or in Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities);

(2) by transfer to a recipient authorized in another state by license issued by the United States Nuclear Regulatory Commission or an Agreement State or to the United States Department of Energy;

(3) by decay in storage as authorized by law;

(4) by release in effluents within the limits specified in §336.313 of this title (relating to Dose Limits for Individual Members of the Public);

(5) as authorized under §336.213 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures);

(6) as authorized under §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage);

(7) as authorized under §336.223 of this title (relating to Disposal in Underground Injection Control Class I Injection Wells);

(8) as authorized under §336.225 of this title (relating to Disposal of Specific Wastes); or

(9) as specifically authorized by commission license issued under this chapter.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) treatment prior to disposal;

(2) treatment by incineration;

(3) decay in storage;

(4) disposal at a land disposal facility; or

(5) disposal by injection in an underground injection control Class I injection well.

(c) Except as provided in subsection (d) of this section, the processing and storage of radioactive material received from other persons is subject to Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(d) The receipt, storage, and/or processing of radioactive materials received at a licensed commercial radioactive material disposal facility for the explicit purpose of disposal at that facility shall be regulated in accordance with the license authorizing disposal under this chapter.

(e) The on-site disposal of low-level radioactive waste is prohibited, except as provided by this section. The commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any facility at which licensed low-level radioactive waste disposal operations began before September 1, 1989, if, after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to public health and safety and to the environment. Persons subject to this subsection shall be licensed under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(f) The disposal of low-level radioactive waste received from other persons is prohibited, except by a person who is specifically licensed under Subchapter H of this chapter.

§336.213. Method of Obtaining Approval of Proposed Activities.

(a) A person who plans to dispose of radioactive material; store or process radioactive substances from other persons; or recover or process source material shall submit an application for a license according to Chapter 305 of this title (relating to Consolidated Permits) and the applicable subchapter in this chapter.

(b) A person holding a license issued under this chapter shall request changes to the license by requesting a license amendment, according to Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits).

(c) If this chapter does not specifically authorize a proposed disposal procedure, a person shall file an application for a license or license amendment under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) for approval of on-site disposal of radioactive material generated in the person's activities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §§336.601, 336.613, 336.619

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The amendments are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or natu-

rally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.601. Applicability.

(a) The criteria in this subchapter apply to the decommissioning of facilities regulated under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), the inactive disposal sites regulated under this subchapter, the ancillary surface facilities that support low-level radioactive waste disposal activities at facilities licensed under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) , naturally occurring radioactive material waste disposal facilities licensed under Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), and to radioactive substances processing and storage facilities licensed under Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(b) This subchapter also establishes the criteria under which a facility may be licensed for decommissioning.

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subchapter, the commission may require additional cleanup only if, based on new information, it determines that the criteria of this subchapter have not been met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(d) When calculating the total effective dose equivalent (TEDE) to the average member of the critical group, the licensee shall determine the peak annual TEDE expected within the first 1,000 years after decommissioning.

§336.619. Financial Assurance for Decommissioning.

(a) A financial assurance mechanism or combination of mechanisms in accordance with Chapter 37 of this title (relating to Financial Assurance) is required for all entities currently licensed or proposed to be licensed, except that licenses and applicants under Subchapter M are subject to the financial assurance requirements of §336.1235 of this title (relating to Financial Assurance for Storage and Processing Facilities).

(b) Applicants for a new license to decommission an inactive disposal site and applicants for a license under Subchapters K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems) shall submit with the application a signed statement regarding how the applicant will provide financial assurance for decommissioning using one or more of the mechanisms specified in Chapter 37 of this title. The amount of financial assurance shall be based upon the detailed cost estimate included in the decommissioning plan submitted with the application.

(c) Holders of licenses for inactive disposal sites issued before January 1, 1998 shall submit a funding plan before January 1, 1998. Each funding plan must contain:

(1) a cost estimate for decommissioning;

(A) Each holder of a license authorizing the disposal of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 105 times the applicable quantities set forth in §336.627 of this title (relating to Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning) or when a combination of isotopes is involved if R divided by 105 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in §336.627 of this title, shall submit a certification of financial assurance for decommissioning in an amount at least equal to $750,000, in accordance with the criteria set forth in this subchapter and Chapter 37 of this title; or

(B) Each holder of a license authorizing disposal of radioactive material with a half-life greater than 120 days shall provide certification of financial assurance for decommissioning based on the quantity of material as follows:

(i) $750,000--greater than 104 but less than or equal to 105 times the applicable quantities in §336.627 of this title, in unsealed form. (For a combination of isotopes, if R, as defined in subparagraph (A) of this paragraph, divided by 104 is greater than 1 but R divided by 105 is less than or equal to 1.); or

(ii) $150,000--greater than 103 but less than or equal to 104 times the applicable quantities in §336.627 of this title in unsealed form. (For a combination of isotopes, if R, as defined in subparagraph (A) of this paragraph, divided by 103 is greater than 1 but R divided by 104 is less than or equal to 1.).

(C) Notwithstanding the requirements of subparagraphs (A) and (B) of this paragraph:

(i) each holder for a license authorizing the disposal of more than 100 millicuries of source material in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of $750,000;

(ii) each holder for a license authorizing the disposal of quantities of source material greater than ten millicuries but less than or equal to 100 millicuries in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of $150,000;

(2) a description of the financial assurance mechanism of assuring funds for decommissioning as specified in Chapter 37 of this title, including means for adjusting cost estimates and associated funding levels annually over the life of the facility; and

(3) a certification by the licensee that a signed original of the financial assurance mechanism for decommissioning, in accordance with criteria set forth in this section and Chapter 37 of this title, has been submitted to and approved by the executive director in the amount specified in paragraph (1) of this subsection.

(d) Holders of existing licenses for inactive disposal sites shall, as part of the license renewal process, submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted with the renewal application. The adjusted amount of financial assurance for decommissioning shall be effective upon license renewal.

(e) Holders of licenses for active disposal sites shall submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted no later than the date specified in §336.625(e) of this title (relating to Expiration and Termination of Licenses).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §§336.1101, 336.1103, 336.1105, 336.1107, 336.1109, 336.1111, 336.1113, 336.1115, 336.1117, 336.1119, 336.1121, 336.1123, 336.1125, 336.1127, 336.1129, 336.1131, 336.1133, 336.1135

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The new sections are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted new sections implement the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.1101. Purpose.
This subchapter provides for the specific licensing of the receipt, possession, use, or disposal of radioactive material in source material recovery facilities and other operations that accept by-product material for disposal. No person may engage in such activities except as authorized in a specific license issued in accordance with this subchapter.

§336.1103. Scope.
In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E of this chapter.

§336.1105. Definitions.
The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

(A) hydraulically interconnected to a natural aquifer;

(B) capable of discharge to surface water; or

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with §336.1131 of this title (relating to Land Ownership of By-Product Material Disposal Sites).

(2) As expeditiously as practicable considering technological feasibility--As quickly as possible considering the physical characteristics of the by-product material and the site, the limits of "available technology" (as defined in this section), the need for consistency with mandatory requirements of other regulatory programs, and "factors beyond the control of the licensee" (as defined in this section). The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "Available technology."

(3) Available technology--Technologies and methods for emplacing a final radon barrier on by-product material piles or impoundments. This term must not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (for example, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs must be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) By-product material--Tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium

from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "by-product material" within this definition.

(5) Capable fault--As used in this section, "Capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(6) Closure--The post-operational activities to decontaminate and decommission the buildings and site used to produce by-product materials and reclaim the tailings or disposal area, including groundwater restoration, if needed.

(7) Closure plan--The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(8) Commencement of construction--Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.

(9) Compliance period--The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(10) Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(11) Disposal area--The area containing by-product materials to which the requirements of §336.1129(p) - (aa) of this title (relating to Technical Requirements) apply.

(12) Existing portion--As used in §336.1129(i)(1) of this title, "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium by-product materials had been placed prior to September 30, 1983.

(13) Factors beyond the control of the licensee--Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with §336.1129(x) of this title. These factors may include but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(14) Final radon barrier--The earthen cover (or approved alternative cover) over by-product material constructed to comply with §336.1129(p) - (aa) of this title (excluding erosion protection features).

(15) Groundwater--Water below the land surface in a zone of saturation. For purposes of this subchapter, groundwater is the water contained within an aquifer as defined in this section.

(16) Hazardous constituent--Subject to §336.1129(j)(5) of this title, "hazardous constituent" is a constituent that meets all three of the following tests:

(A) the constituent is reasonably expected to be in or derived from the by-product material in the disposal area;

(B) the constituent has been detected in the groundwater in the uppermost aquifer; and

(C) the constituent is listed in 10 Code of Federal Regulations Part 40, Appendix A, Criterion 13.

(17) Leachate--Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the by-product material.

(18) Licensed site--The area contained within the boundary of a location under the control of persons generating or storing by-product materials under a license.

(19) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment that restricts the downward or lateral escape of by-product material, hazardous constituents, or leachate.

(20) Maximum credible earthquake--That earthquake that would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(21) Milestone--An action or event that is required to occur by an enforceable date.

(22) Operation--The period of time during which a by-product material disposal area is being used for the continued placement of by-product material or is in standby status for such placement. A disposal area is in operation from the day that by-product material is first placed in it until the day final closure begins.

(23) Point of compliance--The site-specific location in the uppermost aquifer where the groundwater protection standard shall be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(24) Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(25) Reclamation plan--For the purposes of §336.1129(p) - (aa) of this title, "reclamation plan" is the plan detailing activities to accomplish reclamation of the by-product material disposal area in accordance with the technical criteria of this section. The reclamation plan shall include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, windblown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of free-standing liquids and recontouring), and final radon barrier construction. Reclamation of by-product material shall also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(26) Security--This term has the same meaning as financial assurance.

(27) Surface impoundment--A natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

(28) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(29) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(30) Uranium recovery--Any uranium extraction or concentration activity that results in the production of "by-product material" as it is defined in this chapter. As used in this definition, "Uranium recovery" has the same meaning as "uranium milling" in 10 Code of Federal Regulations §40.4.

§336.1107. Filing Application for Specific Licenses.

Unless otherwise specified, an applicant for a license is subject to the requirements in §336.205 of this title (relating to Application Requirements). The applicant shall also comply with the following additional filing requirements.

(1) Applications for specific licenses shall be filed in seven copies in a manner specified by the agency.

(2) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, before the agency issues or renews a license by posting security as required under §336.1125 of this title (relating to Financial Security Requirements).

(3) An application for a license shall contain written specifications relating to the source material recovery facility operations and the disposition of the by-product material.

(4) Each application shall clearly demonstrate how the requirements of §§336.1107, 336.1109, 336.1111, 336.1113, 336.1125, 336.1127, 336.1129, and 336.1131 of this title (relating to Filing Application for Specific Licenses; General Requirements for the Issuance of Specific Licenses; Special Requirements for a License Application for Source Material Recovery and By-Product Material Disposal Facilities; Specific Terms and Conditions of Licenses; Financial Security Requirements; Long-Term Care and Maintenance Requirements; Technical Requirements; and Land Ownership of By-Product Material Disposal Sites) have been addressed.

(5) Applications for new licenses shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing).

§336.1111. Special Requirements for a License Application for Source Material Recovery and By-product Material Disposal Facilities.

In addition to the requirements in §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses), a license may be issued if the applicant submits the items in paragraph (1) of this section for agency approval and meets the conditions in paragraphs (2) and (3) of this section.

(1) An application for a license must include the following:

(A) for new licenses, an environmental report that includes the results of a one-year preoperational monitoring program and for renewal of licenses, an environmental report containing the results of the operational monitoring program. Both must also include the following:

(i) description of the proposed project or action;

(ii) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(iii) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(iv) environmental effects of accidents;

(v) by-product material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(vi) site and project alternative;

(B) a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the by-product material disposal areas in accordance with the technical requirements of §336.1129 of this title (relating to Technical Requirements);

(C) proposal of an acceptable form and amount of financial security consistent with the requirements of §336.1125 of this title (relating to Financial Security Requirements);

(D) procedures describing the means employed to meet the requirements of §336.1113(1) and (2) of this title (relating to Specific Terms and Conditions of Licenses) and §336.1129(o) of this title during the operational phase of any project;

(E) specifications for the emissions control and disposition of the by-product material; and

(F) for disposal of by-product material received from others, information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(G) an adequate operating, radiation safety, and emergency procedures manual; and

(H) a signed certification from the owner or owners of the real property on which radioactive substances are recovered, stored, processed, or disposed acknowledging that:

(i) radioactive substances are recovered, stored, processed or disposed on the property with the consent of the property owner or owners; and

(ii) decommissioning of the licensed site may be required even if the applicant or licensee is unable or fails to decommission the licensed site as required by a license, rule or order of the commission.

(2) Except as provided in this section, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license. For an application for a new license to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007, the applicant may commence construction as provided in §336.1135 of this title (relating to Construction Activities), at the applicant's own risk, upon the executive director's issuance of the Environmental Analysis provided under §281.21(f) of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History).

(3) An application for a license must be submitted according to the applicable requirements of the Texas Engineering Practice Act, the Texas Geoscience Practice Act, and the Professional Land Surveying Practices Act.

§336.1113. Specific Terms and Conditions of Licenses.

Unless otherwise specified, each license issued in accordance with this section is subject to the requirements of §305.125 of this title (relating to Standard Permit Conditions) and the following.

(1) Daily inspection of any by-product material retention systems shall be conducted by the licensee. General qualifications for individuals conducting inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(2) In addition to the applicable requirements of §336.350 and §336.352 of this title (relating to Reports of Stolen, Lost, or Missing Licensed Radioactive Material and Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits), the licensee shall immediately notify the agency of the following:

(A) any failure in a by-product material retention system that results in a release of by-product material into unrestricted areas;

(B) any release of radioactive material that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title (relating to Appendix B. Annual Limits in Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) and that extends beyond the licensed boundary;

(C) any spill that exceeds 20,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title; or

(D) any release of solids that exceeds the limits in §336.1115(e) of this title (relating to Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas) and that extends beyond the licensed boundary.

(3) In addition to the applicable requirements of Chapter 327 of this title (relating to Spill Prevention and Control) and §336.350 and §336.352 of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 feet from a recovery plant; or

(B) any spill that exceeds 2,000 gallons and that exceeds the concentrations for water listed in Table II, Column 2, of §336.359 of this title.

(4) At any time before termination of the license, the licensee shall submit written statements under oath upon request of the commission or executive director to enable the commission to determine whether or not the license should be modified, suspended, or revoked.

(5) The licensee shall be subject to the applicable provisions of Texas Health and Safety Code, Chapter 401, also known as the Texas Radiation Control Act (TRCA) now or hereafter in effect and to applicable rules and orders of the commission. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to TRCA or by reason of rules and orders issued in accordance with terms of TRCA.

(6) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of TRCA, or because of conditions revealed by any application or statement of fact or any report, record or inspection or other means that would warrant the commission to refuse to grant a license on the original application, or for failure to operate the facility in accordance with the terms of the license, or for any violation of or failure to observe any of the terms and conditions of TRCA or the license or of any rule or order of the commission.

(7) Each person licensed by the commission under this subchapter shall confine possession and use of radioactive materials to the locations and purposes authorized in the license.

(8) No by-product may be disposed of until the executive director has inspected the facility and has found it to be conformance with the description, design, and construction described in the application for a by-product disposal license. No by-product may be received for disposal at the facility until the executive director has approved financial assurance.

(9) The commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule or order, additional requirements or conditions with respect to the licensee's receipt, possession, or disposal of by-product as it deems appropriate or necessary in order to:

(A) protect the health and safety of the public and the environment; or

(B) require reports and recordkeeping and to provide for inspections of activities under the licenses that may be necessary or appropriate to effectuate the purposes of TRCA and rules thereunder.

§336.1115. Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas.

(a) The term of the specific license is for a fixed term not to exceed ten years.

(b) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(c) All license provisions continue in effect beyond the expiration date with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee must:

(1) be limited to actions involving radioactive material that are related to decommissioning; and

(2) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements of subsection (e) of this section.

(d) Within 60 days of the occurrence of any of the following, each licensee must provide notification to the agency in writing and either begin decommissioning its site, or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in §336.1111(1)(B) of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-Product Material Disposal Facilities), so that the buildings or outdoor areas are suitable for release in accordance with subsection (e) of this section if:

(1) the license has expired in accordance with subsection (a) of this section; or

(2) the licensee has decided to permanently cease principal activities, as defined in §336.1105(24) of this title (relating to Definitions), at the entire site or in any separate building or outdoor area; or

(3) no principal activities have been conducted for a period of 24 months in any building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(e) Outdoor areas are considered suitable for release for unrestricted use if the following limits are not exceeded.

(1) The concentration of radium-226 or radium-228 (in the case of thorium by-product material) in soil, averaged over any 100 square meters (m^2), may not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(2) The contamination of vegetation may not exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(3) The concentration of natural uranium in soil, with no daughters present, averaged over any 100 m^2, may not exceed the background level by more than:

(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface; and

(4) no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year as calculated by the methodology provided in NUREG-1620, Appendix H - "Guidance to the U.S. Nuclear Regulatory Commission Staff on the Radium Dose Approach."

(f) Coincident with the notification required by subsection (c) of this section, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with §336.1125 of this title (relating to Financial Security Requirements) in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with subsection (l)(5) of this section.

(g) In addition to the provisions of subsection (h) of this section, each licensee must submit an updated closure plan to the agency within 12 months of the notification required by subsection (d) of this section. The updated closure plan must meet the requirements of §336.1111(1)(B) and §336.1125 of this title. The updated closure plan must describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(h) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with subsection (d) of this section. The schedule for decommissioning in subsection (d) of this section may not begin until the agency has made a determination on the request.

(i) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(1) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(j) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with subsection (d) of this section if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(k) The procedures listed in subsection (i) of this section may not be carried out prior to approval of the decommissioning plan.

(l) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(1) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (p) of this section.

(m) The proposed decommissioning plan may be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the occupational health and safety of workers and the public will be adequately protected.

(n) Except as provided subsection (p) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(o) Except as provided in subsection (p) of this section, when decommissioning involves the entire site, the licensee must request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(p) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor areas and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(3) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(q) As the final step in decommissioning, the licensee must:

(1) certify the disposition of all radioactive material, including accumulated by-product material;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with subsection (e) of this section. The licensee shall, as appropriate:

(A) report the following levels:

(i) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(ii) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(iii) μCi (MBq) per milliliter for water; and

(iv) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(B) specify the manufacturer's name, and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(r) The executive director will provide written notification to specific licensees, including former licensees with license provisions continued in effect beyond the expiration date in accordance with subsection (d) of this section, that the provisions of the license are no longer binding. The executive director will provide such notification when the executive director determines that:

(1) radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with agency requirements;

(4) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the requirements of subsection (e) of this section;

(5) all records required by §336.343 of this title (relating to Records of Surveys) have been submitted to the agency;

(6) the licensee has paid any outstanding fees required by this chapter and has resolved any outstanding notice(s) of violation issued to the licensee;

(7) the licensee has met the applicable technical and other requirements for closure and reclamation of a by-product material disposal site; and

(8) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(s) Licenses for source material recovery or by-product material disposal are exempt from subsections (d)(3), (g), and (h) of this section with respect to reclamation of by-product material impoundments or disposal areas. Timely reclamation plans for by-product material disposal areas must be submitted and approved in accordance with §336.1129(p) - (aa) of this title (relating to Technical Requirements).

(t) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed shall be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in subsection (e) of this section and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

§336.1117. Renewal of Licenses.

(a) Application for a renewal of specific licenses must be filed in accordance with §336.1107 of this title (relating to Filing Application for Specific Licenses) and §336.1111(1) of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-Product Material Disposal Facilities). Application for a renewal of a specific license must be filed by the date specified in the license. If the licensee fails to apply for a renewal and fails to pay the fee required by Subchapter B of this chapter, the license expires and the licensee must comply with the requirements of §336.1115 of this title (relating to Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings, or Outdoor Areas). In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(b) In any case in which a licensee, prior to expiration of the existing license, has filed a request in proper form for a renewal or

for a new license authorizing the same activities, such existing license will not expire until the application has been finally determined by the agency. In any case in which a licensee, not more than 30 days after the expiration of an existing license, has filed an application for renewal or for a new license authorizing the same activities and paid the fee required by Subchapter B of this chapter, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency.

(c) An application for renewal of a license may be approved if the agency determines that the requirements of §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses) have been satisfied.

§336.1121. Agency Action on Applications to Renew or Amend.

In considering a request by a licensee to renew or amend a license, the agency will apply the appropriate criteria in §336.1109 of this title (relating to General Requirements for the Issuance of Specific Licenses) and §336.1111 of this title (relating to Special Requirements for a License Application for Source Material Recovery and By-Product Material Disposal Facilities).

§336.1125. Financial Security Requirements.

(a) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee 60 days prior to the receipt or possession of radioactive substances to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any by-product material disposal areas. The amount of funds to be ensured by such security arrangements shall be based on agency-approved cost estimates in an agency-approved closure plan for:

(1) decontamination and decommissioning of buildings and the site to levels that allow unrestricted use of these areas upon decommissioning; and

(2) the reclamation of by-product material disposal areas in accordance with technical criteria delineated in §336.1129 of this title (relating to Technical Requirements).

(b) The licensee shall submit this closure plan in conjunction with an environmental report that addresses the expected environmental impacts of the licensee's operation, decommissioning and reclamation, and evaluates alternatives for mitigating these impacts.

(c) The security shall also cover the payment of the charge for long-term surveillance and control for by-product material disposal areas required by §336.1127(c) of this title (relating to Long-Term Care and Maintenance Requirements).

(d) A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).

§336.1129. Technical Requirements.

(a) By-product material handling and disposal systems must be designed to accommodate full-capacity production over the lifetime of the facility. When later expansion of systems or operations may be likely, capability of the disposal system to be modified to accommodate increased quantities without degradation in long-term stability and other performance factors must be evaluated.

(b) In selecting among alternative by-product material disposal sites or judging the adequacy of existing sites, the following site features which would assure meeting the broad objective of isolating the tailings and associated contaminants without ongoing active maintenance must be considered:

(1) remoteness from populated areas;

(2) hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from usable groundwater sources; and

(3) potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

(c) The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these site features.

(d) In the selection of disposal sites, primary emphasis must be given to isolation of the by-product material, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits (e.g., minimization of transportation of land acquisition costs). While isolation of by-product material will also be a function of both site and engineering design, overriding consideration must be given to siting features.

(e) By-product material should be disposed of in a manner such that no active maintenance is required to preserve conditions of the site.

(f) The applicant's environmental report must evaluate alternative sites and disposal methods and shall consider disposal of by-product material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments must be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the by-product material from natural erosional forces.

(g) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, by-product material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations must be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(h) The following site and design requirements must be adhered to whether by-product material is disposed of above or below grade:

(1) the upstream rainfall catchment areas must be minimized to decrease erosion potential by flooding that could erode or wash out sections of the by-product material disposal area;

(2) the topographic features must provide good wind protection;

(3) the embankment and cover slopes must be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades that are as close as possible to those that would be provided if by-product material was disposed of below grade. Slopes must not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions that make such slopes acceptable shall be identified;

(4) a full self-sustaining vegetative cover must be established or rock cover employed to reduce wind and water erosion to negligible levels;

(5) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The agency may consider relaxing this requirement for extremely gentle slopes, such as those that may exist on the top of the pile;

(6) the following factors must be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(A) shape, size, composition, gradation of rock particles (excepting bedding material, average particles size must be at least cobble size or greater);

(B) rock cover thickness and zoning of particles by size; and

(C) steepness of underlying slopes.

(7) individual rock fragments must be dense, sound, and resistant to abrasion, and shall be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(8) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; there is negligible drainage catchment area upstream of the pile; and there is good wind protection;

(9) all impoundment surfaces must be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed must be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain must be evaluated to assure that there are no ongoing or potential processes, such as gully erosion, which would lead to impoundment instability;

(10) the impoundment must not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand; and

(11) the impoundment should be designed to incorporate features that will promote deposition. Design features that promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized. The object of such a design feature would be to enhance the thickness of cover over time.

(i) The following groundwater protection requirements and those in subsections (j) and (k) of this section and §336.1133 of this title (relating to Maximum Values for Use in Groundwater Protection) apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by subsections (bb) and (cc) of this section.

(1) The primary groundwater protection standard is a design standard for surface impoundments used to manage uranium or thorium by-product material. Unless exempted under subsection (i)(3) of this section, surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. If the liner is constructed of materials that may allow wastes to migrate into the liner during the active life of the facility, impoundment closure shall include removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(2) The liner required by paragraph (1) of this subsection must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(3) The applicant or licensee may be exempted from the requirements of paragraph (1) of this subsection if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(A) the nature and quantity of the wastes;

(B) the proposed alternate design and operation;

(C) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(D) all other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(4) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-off; from malfunctions of level controllers, alarms, and other equipment; and from human error.

(5) When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

(j) By-product materials must be managed to conform to the following secondary groundwater protection requirements.

(1) Hazardous constituents, as defined in §336.1105(16) of this title (relating to Definitions), entering the groundwater from a licensed site must not exceed the specified concentration limits in the

uppermost aquifer beyond the point of compliance during the compliance period.

(2) Specified concentration limits are those limits established by the agency as indicated in paragraph (7) of this subsection.

(3) The agency will also establish the point of compliance and compliance period on a site-specific basis through license conditions and orders.

(4) When the detection monitoring established under subsections (bb) and (cc) of this section indicates leakage of hazardous constituents from the disposal area, the agency will perform the following:

(A) identify hazardous constituents;

(B) establish concentration limits;

(C) set the compliance period; and

(D) may adjust the point of compliance if needed in accordance with developed data and site information regarding the flow of groundwater or contaminants.

(5) Even when constituents meet all three tests in the definition of hazardous constituent, the agency may exclude a detected constituent from the set of hazardous constituents on a site-specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the agency will consider the following:

(A) potential adverse effects on groundwater quality, considering the following:

(i) physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(ii) hydrogeological characteristics of the licensed site and surrounding land;

(iii) quantity of groundwater and the direction of groundwater flow;

(iv) proximity of groundwater users and groundwater withdrawal rates;

(v) current and future uses of groundwater in the area;

(vi) existing quality of groundwater, including other sources of contamination and cumulative impact on the groundwater quality;

(vii) potential for human health risks caused by human exposure to waste constituents;

(viii) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(ix) persistence and permanence of potential adverse effects; and

(B) potential adverse effects on quality of hydraulically-connected surface water, considering the:

(i) volume and physical and chemical characteristics of the by-product material in the licensed site;

(ii) hydrogeological characteristics of the licensed site and surrounding land;

(iii) quantity and quality of groundwater and the direction of groundwater flow;

(iv) patterns of rainfall in the region;

(v) proximity of the licensed site to surface waters;

(vi) current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) existing quality of surface water, including potential impacts from other sources of contamination and the cumulative impact on surface water quality;

(viii) potential for human health risks caused by human exposure to waste constituents;

(ix) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) persistence and permanence of the potential adverse effects.

(6) In making any determinations under paragraphs (5) and (8) of this subsection about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency (EPA) and the commission under Chapter 331 of this title.

(7) At the point of compliance, the concentration of a hazardous constituent may not exceed the following:

(A) the agency approved background concentration in the groundwater of the constituents listed in 10 Code of Federal Regulations (CFR) 40, Appendix A, Criterion 13;

(B) the respective value given in §336.1133 of this title if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(C) an alternate concentration limit established by the agency.

(8) Alternate concentration limits to background concentration or to the drinking water limits in §336.1133 of this title that present no significant hazard may be proposed by licensees for agency consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency shall consider. The agency may establish a site-specific alternate concentration limit for a hazardous constituent, as provided in paragraph (7) of this subsection, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in paragraph (4) of this subsection.

(k) If the groundwater protection standards established under subsection (i) of this section are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee must submit the proposed corrective action program and supporting rationale for executive director approval prior to putting the program into operation, unless otherwise directed by the executive director. The licensee's proposed program must address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compli-

ance and downgradient licensed site boundary. The licensee must continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The executive director will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(l) In developing and conducting groundwater protection programs, applicants and licensees must also consider the following:

(1) installation of bottom liners. Where synthetic liners are used, a leakage-detection system must be installed immediately below the liner to ensure detection of any major failures. This is in addition to the groundwater monitoring program conducted as provided in subsection (cc) of this section. Where clay liners are proposed or relatively thin, in situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to by-product material solutions. Tests must be run for a sufficient period of time to reveal any effects that may occur;

(2) mill process designs that provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the by-product material impoundment;

(3) dewatering of by-product material solutions by process devices and/or in situ drainage systems. At new sites, by-product material solutions must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show by-product material solutions are not amenable to such a system. Where in situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free-running. The drainage system must also be adequately sized to assure good drainage; and

(4) neutralization to promote immobilization of hazardous constituents.

(m) Technical specifications must be prepared for installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure that specifications are met. If adverse groundwater impacts or conditions conducive to adverse groundwater impacts occur due to seepage, action must be taken to alleviate the impacts or conditions and restore groundwater quality to levels consistent with those before operations began. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis.

(n) In support of a by-product material disposal system proposal, the applicant/licensee must supply the following information:

(1) the chemical and radioactive characteristics of the waste solutions;

(2) the characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This must include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered by borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability must not be determined on the basis of laboratory analysis of samples alone. A sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to make possible estimates of chemisorption attenuation properties of underlying soil and rock; and

(3) location, extent, quality, capacity, and current uses of any groundwater at and near the site.

(o) If ore is stockpiled, methods must be used to minimize penetration of radionuclides and other substances into underlying soils.

(p) In disposing of by-product material, licensees must place an earthen cover over the by-product material at the end of the facility's operations and shall close the waste disposal area in accordance with a design that provides reasonable assurance of control of radiological hazards to the following:

(1) be effective for 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years; and

(2) limit releases of radon-222 from uranium by-product materials and radon-220 from thorium by-product materials to the atmosphere so as not to exceed an average release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined in accordance with paragraph (1) of this subsection. This average applies to the entire surface of each disposal area over a period of at least one year, but a short period compared to 100 years. Radon will come from both by-product materials and cover materials. Radon emissions from cover materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from by-product materials to the atmosphere.

(q) In computing required by-product material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the by-product material should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. Cover may not include materials that contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee must demonstrate that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(r) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium by-product material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee must verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding $20pCi/m^2s$ averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(s) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in §336.1105(25) of this title, the verification of radon-222 release rates required in subsection (dd) of this section must be conducted for each portion of the

pile or impoundment as the final radon barrier for that portion is emplaced.

(t) Within 90 days of the completion of all testing and analysis relevant to the required verification in subsection (dd)(3) and (dd)(4) of this section, the uranium recovery licensee must report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s when averaged over the entire pile or impoundment. The licensee must maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records must be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with §336.1131 of this title (relating to Land Ownership of By-Product Material Disposal Sites).

(u) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(v) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2), that, as a result of by-product material, does not exceed the background level by more than:

(1) 5 picocuries per gram (pCi/g) of radium-226, or in the case of thorium by-product material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(2) 15 pCi/g of radium-226, or in the case of thorium by-product material, radium-228, averaged over 15-cm thick layers more than 15 cm below surface.

(w) The licensee must also address the nonradiological hazards associated with the waste in planning and implementing closure. The licensee must ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to groundwater or surface waters or to the atmosphere.

(x) For impoundments containing uranium by-product materials, the final radon barrier shall be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in §336.1105(25) of this title, approved by the agency, by license amendment. (The term "As expeditiously as practicable considering technological feasibility" includes "Factors beyond the control of the licensee.") Deadlines for completion of the final radon barrier and applicable interim milestones shall be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown by-product material and placement on the pile and the interim stabilization of the by-product material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the by-product material shall also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(y) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in subsection (r) of this section that releases of radon-222 do not exceed an average of 20 pCi/m^2s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m^2s, a verification of radon levels, as required by subsection (r) of this section, shall be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "Available technology," and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(z) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium by-product material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m^2s averaged over the entire impoundment. The verification required in subsection (r) of this section may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m^2s averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only by-product material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with subsection (p) of this section. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(aa) The licensee's closure plan must provide reasonable assurance that institutional control will be provided for the length of time found necessary by the agency to ensure the requirements of subsection (p) of this section are met.

(bb) Prior to any major site construction, a preoperational monitoring program must be conducted for one full year to provide complete baseline data on the site and its environs. Throughout the construction and operating phases of the project, an operational monitoring program must be conducted to measure or evaluate compliance with applicable standards and rules; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

(cc) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in subsection (j)(4) of this section. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information must provide a sufficient basis to identify those hazardous constituents that require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring

program must be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with subsection (j)(4) of this section, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this subsection may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(dd) Systems must be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this must be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

(1) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of by-product materials must be kept as low as is reasonably achievable.

(2) Checks must be made and logged hourly of all parameters which determine the efficiency of emission control equipment operation. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency. Corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the uranium dryer stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts must be reported to the executive director in writing within ten days of the subsequent restart.

(3) To control dusting from by-product material, that portion not covered by standing liquids must be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if by-product materials are effectively sheltered from wind, as in the case of below-grade disposal. Consideration must be given in planning by-product material disposal programs to methods for phased covering and reclamation of by-product material impoundments. To control dusting from diffuse sources, applicants/licensees must develop written operating procedures specifying the methods of control that will be utilized.

(4) Uranium recovery facility operations producing or involving thorium by-product material must be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems (mrem) to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials to the general environment, radon-220 and its daughters excepted.

(5) By-product materials must be managed so as to conform to the applicable provisions of 40 CFR Part 440, as codified on January 1, 1983.

(ee) Licensees/applicants may propose alternatives to the specific requirements in §336.1125 of this title (relating to Financial Security Requirements), §336.1127 of this title (relating to Long-Term Care and Maintenance Requirements), §336.1129 of this title (relating to Technical Requirements) and §336.1131 of this title (relating to Land Ownership of By-Product Material Disposal Sites). The alternative proposals may take into account local or regional conditions including geology, topography, hydrology, and meteorology.

(ff) The agency may find that the proposed alternatives meet the agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level that would be achieved by the requirements of §§336.1125, 336.1127, 336.1129 and 336.1131 of this title and the standards promulgated by EPA in 40 CFR Part 192, Subparts D and E.

(gg) All site-specific licensing decisions based on the criteria in §§336.1125, 336.1127, 336.1129 and 336.1131 of this title, or alternatives proposed by licensees or applicants must take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the agency determines to be appropriate.

(hh) Any proposed alternatives to the specific requirements in §§336.1125, 336.1127, 336.1129 and 336.1131 of this title must meet the requirements of 10 CFR §150.31(d).

(ii) No new site may be located in a 100-year floodplain or wetland as defined in "Floodplain Management Guidelines for Implementing Executive Order 11988."

§336.1135. Construction Activities.

For an application for a new license to dispose of by-product material that was filed with the Texas Department of State Health Services on or before January 1, 2007, an applicant may commence construction activities before issuance of a license, at the applicant's own risk, under the following conditions:

(1) the applicant has completed preoperational monitoring provided under §336.1129(bb) of this title (relating to Technical Requirements);

(2) the executive director has issued an environmental analysis and final draft license with recommendation to approve the application under §281.21 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History);

(3) the applicant may not receive, store, possess, receive or dispose of by-product material without a license from the commission authorizing the activity;

(4) the agency may inspect and observe the construction activities;

(5) the applicant must cease construction activities when directed by the executive director to do so; and

(6) the commencement of construction activities may not be considered as a factor in determining whether to issue a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2008.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

30 TAC §§336.1201, 336.1203, 336.1205, 336.1207, 336.1209, 336.1211, 336.1213, 336.1215, 336.1217, 336.1219, 336.1221, 336.1223, 336.1225, 336.1227, 336.1229, 336.1231, 336.1233, 336.1235

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The new sections are also adopted under Texas Health and Safety Code, Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted new sections implement the Texas Health and Safety Code, as amended by SB 1604, 80th Legislature, 2007, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.2625, and 401.412.

§336.1213. Additional Environmental Requirements.

An application for a license for a processing or storage facility must include environmental information that may be based on reconnaissance level information when appropriate and addresses the following:

(1) description of present land uses and population distribution in the vicinity of the site:

(A) for radioactive substances storage facilities, the description must address properties adjacent to the site; and

(B) for radioactive substances processing facilities, the description must address properties adjacent to the site and shall include population distribution within a one-mile radius of the site;

(2) area/site suitability including geology, hydrology, and natural hazards. For radioactive substances processing facilities, area meteorology also must be addressed;

(3) site and project alternatives including alternative siting analysis;

(4) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of radioactive material; and

(5) environmental effects of postulated accidents.

§336.1235. Financial Assurance for Storage and Processing.
A licensee or applicant must establish financial assurance under the requirements of 25 TAC Chapter 289 (relating to Radiation Control).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts adopts an amendment to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9570).

This section is being amended to implement Senate Bill 377, 80th Legislature, 2007, to clarify application of Senate Bill 640, 77th Legislature, 2001, to delete reference to the state treasurer's office and to reflect current agency policy. Pursuant to Senate Bill 377, effective June 15, 2007, Tax Code, §111.0625 is amended to allow the comptroller by rule to require taxpayers who paid $10,000 or more during the preceding fiscal year in specific categories of payments to transfer payments in those categories by means of electronic funds transfer if it is reasonably anticipated that they will pay at least that amount during the current fiscal year. Subsection (b)(2) was added to require payments by electronic funds transfer from taxpayers who paid more than $10,000, but less than $100,000, in a single category of payments or taxes in the preceding fiscal year; to list the cat-

egories of payments or taxes to which this requirement applies; to state the comptroller's authority to add or remove a category of payments from this requirement; to indicate the comptroller's authority to specify the methods of electronic funds transfers that may be used; and to provide a means for taxpayers to request waiver of the requirement. Pursuant to Senate Bill 377, effective September 1, 2008, Tax Code, §111.0626 is amended to allow the comptroller by rule to require a taxpayer who paid $50,000 or more during the preceding fiscal year to file reports electronically. Subsection (c)(1) is being amended to reflect this statutory change and to indicate that such reports will be due upon proper notification to taxpayers by the comptroller. Subsection (a)(1) is being amended to reflect agency policy that authorization for electronic filing of returns and reports does not require a written agreement, but requires either registration or a comptroller-issued password or PIN. Subsection (d) is being amended to delete reference to the state treasurer's office, whose functions were absorbed by the comptroller in 1996 pursuant to Senate Bill 20, 74th Legislature, 1995. Subsection (g) is being amended to clarify that Tax Code, §111.063, as amended by Senate Bill 640, 77th Legislature, 2001, allows the comptroller to impose a 5.0% penalty for failure to pay by electronic funds transfer, when required, as well as for failure to electronically report under Tax Code, §111.0626.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§111.0625, 111.0626, 111.063.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800679
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.415

The Comptroller of Public Accounts adopts an amendment to §9.415, concerning applications for property tax exemptions, with changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8698). Tax Code, §11.43 requires the comptroller to prescribe exemption application forms.

The rule was amended to adopt by reference two new exemption application forms and adopt changes to two currently adopted exemption application forms. A new exemption application for goods in transit is adopted with changes to implement House Bill 621, effective January 1, 2008, which created the new exemption. A new exemption application form for vehicles used to produce income and personal non-income producing activities is adopted with changes to implement House Bill 1022, effective January 1, 2008, which created the new exemption. The amended property tax exemption application form for charitable organizations is adopted without changes to the proposed application form. The application was amended to implement provisions of House Bill 1742, effective September 1, 2007, which created charitable organization exemptions for organizations acquiring, holding, and transferring unimproved real property under an urban land bank demonstration program established under Local Government Code, Chapters 379C and 379E on behalf of a land bank. The exemption application form for a residence homestead property tax exemption is adopted with changes to the proposed application form. The application was amended in part to implement House Bill 1460, which changed the documentation requirements for applicants whose residence homestead is a mobile home. The application was also amended to expand information about the qualification of up to 20 acres of land used in the residential occupancy of the home.

Ms. Debbie Cartwright of Bexar Appraisal District suggested changes to the portion of the application instructions that address the qualification requirements, which paraphrased the statute. The agency changed the instructions to more closely reflect the language used in the statute. The commenter suggested that questions about the transportation of the property state clearly that the property may be transported inside or outside the state of Texas. The agency agreed and made the requested changes.

The commenter requested that the proposed application to exempt a vehicle used for the production of income and for personal non-income producing activities permit an applicant to choose to provide the vehicle's license plate number instead of the vehicle's identification number (VIN). The agency made the suggested change. The commenter noted that the instructions could be expanded, but did not make specific suggestions. In response, the instructions were expanded to include the deadline to apply for the exemption for 2007. The commenter requested that the proposed form should be changed to require the taxpayer to provide the age and cost of the vehicle. The agency declined because Tax Code, §11.43 requires the comptroller to prescribe exemption applications and requires the application to provide the information necessary to verify that the property qualifies. Information about the vehicle's cost and age is not required to identify the vehicle or determine its location for property tax purposes, nor is the information needed to determine if the vehicle's use qualifies it for the exemption.

The chief appraiser of Ellis County Appraisal District, Kathy Rodrigue, requested that the homestead exemption application inform applicants of the documentation that must be provided to qualify for the additional exemption for disabled homeowners. The agency agreed and added information describing the documentation that a disabled applicant must provide to qualify for the additional homestead exemption. The Chief Appraiser of Camp County Appraisal District requested that the homestead application be amended to inform a mobile home owner that the title for the home must be in the owner's name. The agency declined to make the change because the application addresses ownership and the law permits a chief appraiser to require adequate

documentation before granting an exemption. Tax Code, §11.45 gives the chief appraiser the authority to deny an application that is inadequately documented or disapprove the application and request additional information. If the additional information is not provided in a timely manner, the chief appraiser may deny the application.

The Chief Appraiser of Runnells County, Patsy Dunn, commented in general that all prescribed property tax forms should be formatted differently. The commenter stated that the forms should place the recipient's address where it will show, when folded, through the "window" of a specific sized envelope. The change was not made because appraisal districts may change the format of comptroller forms to permit this type of use.

The amendment is adopted under Tax Code, §11.43, which requires the comptroller to prescribe the contents of an application for each type of exemption.

The amendment implements Tax Code, §11.43, House Bill 621, House Bill 1022, House Bill 1460, and House Bill 1742, adopted in 2007 by the 80th Legislature.

§9.415. Applications for Property Tax Exemptions.

(a) With the application for exemption for residence homesteads (Form 50-114), the appraisal office shall:

(1) provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers; or

(2) provide the appraisal district's name and appraisal district's phone number on the form, with an instruction that the property owner may call the appraisal district to determine what homestead exemptions are offered by the property owner's taxing units.

(b) If the chief appraiser learns of the death of a person qualified for over-65 or disabled homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 or disabled exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(c) The model forms in paragraphs (1) - (27) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

(1) Application for Transitional Housing Property Tax Exemption (Form 50-140);

(2) Application for Residence Homesteads (Form 50-114);

(3) Application for Cemetery Exemption (Form 50-120);

(4) Application for Charitable Organizations (Form 50-115);

(5) Application(s) for Charitable Organization Providing Low-Income Housing (Form 50-242 and Form 50-243);

(6) Application for Youth Spiritual, Mental, and Physical Development Organizations (Form 50-118);

(7) Application for Religious Organizations (Form 50-117);

(8) Application for Privately Owned Schools (Form 50-119);

(9) Application for Disabled Veteran's or Survivor's Exemption (Form 50-135);

(10) Application for Miscellaneous Property Tax Exemptions (Form 50-128);

(11) Application for Theater School Property Tax Exemption (Form 50-125);

(12) Application for Historic Sites Property Tax Exemption (Form 50-122);

(13) Application for Goods Exported from Texas (freeport exemption) (Form 50-113);

(14) Application for Solar and Wind-Powered Energy Device Exemption (Form 50-123);

(15) Application for Property Tax Abatement Exemption (Form 50-116);

(16) Application for Stored Offshore Drilling Rig Exemption (Form 50-124);

(17) Application for Dredge Disposal Site Exemption (Form 50-121);

(18) Application for Nonprofit Water Supply or Wastewater Services Corporation (Form 50-214);

(19) Application for Pollution Control Property (Form 50-248);

(20) Application for Cotton Stored in a Warehouse (Form 50-245);

(21) Application(s) for Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing Tax Exemption Previously Exempt in 2003 (Form 50-263 and Form 50-264);

(22) Application for Water Conservation Initiatives Property Tax Exemption (Form 50-270);

(23) Application for Ambulatory Health Care Center Assistance Exemption (Form 50-282);

(24) Application for Raw Cocoa and Green Coffee Held in Harris County (Form 50-297);

(25) Application for Organizations Constructing or Rehabilitating Low-Income Housing for Property Tax Exemption (Form 50-310);

(26) Application For Exemption of Goods-In-Transit (Form 50-758); and

(27) Application For Property Tax Exemption: For Vehicle Used To Produce Income and Personal Non-Income Producing Activities (Form 50-759).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2008.

TRD-200800723

Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: February 26, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 475-0387

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SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3044

The Comptroller of Public Accounts adopts an amendment to §9.3044, concerning appointment of agents for property taxes, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9587). Tax Code, §1.111 governs the designation of a person to act as the owner's agent for any purpose under Tax Code, Title 1, in connection with the property or the property owner.

Subsection (c) is being amended to clarify that the previous amendments to the rule are not intended to conflict with the provisions of Tax Code, §1.111(b). The rule was recently amended to provide that a person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162-1 or form 50-241-1 on behalf of a property owner, and to specify that when the form for designating an agent conflicts with the form for updating the designation of agent, the form for designating an agent prevails. Some appraisal districts have interpreted these provisions in a manner that conflicts with the provisions of Tax Code, §1.111(b). The amendment clarifies that nothing in the rule is intended to conflict with Tax Code, §1.111(b). Subsection (n) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §1.111(h), which requires that the comptroller adopt rules to facilitate compliance with the law.

The amendment implements Tax Code, §1.111(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2008.

TRD-200800680
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: February 24, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts the amendments to §367.1, concerning Continuing Education, with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9313). Section 367.1 is adopted with changes to correct a typographical error. In the proposed rule text the section number was incorrectly submitted as §376.1. The only change to the rule is to correct the section number.

The amended section is adopted, in part, to clarify the continuing education requirements for occupational therapists. The amended section removed the reference to AOTA's categories and added the requirement for licensees to choose continuing education according to the Type 1 and Type 2 definitions.

Five comments were received from individuals.

One suggested adding OT theory, OT ethics, and OT practice framework to Type 2 when presented by an OT practitioner. This item will be on the agenda for the April Rules Committee. No change was made in response to this comment.

One of the comments concerned taking the same course twice, which is not allowed by rule if it's the exact same course. No change was made in response to this comment.

The other comments were in favor of the rule as proposed.

The amendments are adopted under the Occupational Therapy Act, Title 3, Chapter 454, Subchapter H of the Texas Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by this amended section.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

(d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(e) Specific continuing educational activities may be counted only one time in the licensee's career unless content has been updated or revised.

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2008.

TRD-200800685

John Maline

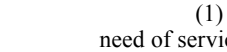
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Effective date: February 25, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts the amendments to §372.1, concerning Provision of Services, with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9314).

The amended section is adopted, in part, to delineate the role distinctions between the OTR/LOT and the COTA/LOTA. It also recognizes that a COTA/LOTA may hold a supervisory role, but cannot determine occupational therapy services.

Five comments were received from individuals.

One comment suggested giving COTAs the ability to determine initiation, continuation and discharge of therapy. The Board disagrees. The Board thinks it is inappropriate to give this additional authority to COTAs. The Board thinks that it is in the best interest of a patient's health and safety to allow only OTRs and LOTs to determine the initiation, continuation and discharge of therapy.

The second comment suggested adding LOTA where COTA was written. The Board agrees with this comment and amends the section to add LOTA where COTA appeared in the rule.

The third comment suggested adding "time intensity" to the language. The time intensity question will be charged to the next rules committee.

The fourth comment felt the additional verbage was unnecessary. The Board disagrees. The additional language is necessary to delineate the role distinctions between the OTR/LOT and the COTA/LOTA.

The fifth comment agreed with the board's proposed amendments.

The amendments are adopted under the Occupational Therapy Act, Title 3, Chapter 454, Subchapter H of the Texas Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by this amended section.

§372.1. Provision of Services.

(a) Medical Conditions.

(1) Treatment for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(2) The referral may be an oral or signed written order. If oral, it must be followed by a signed written order.

(3) If a written referral signed by the referral source is not received by the third treatment or within two weeks from the receipt of the oral referral, whichever is later, the therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, return receipt, etc.). The therapist must exercise professional judgment to determine cessation or continuation of treatment with a receipt of the written referral.

(b) Non-Medical Conditions.

(1) Consultation, monitored services, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or treatment process when necessary to insure the safety and welfare of the consumer.

(c) Screening. A screening may be performed by an occupational therapy practitioner.

(d) Evaluation.

(1) Only an OTR or LOT may perform the evaluation.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The OTR or LOT must have face-to-face, real time interaction with the patient or client during the evaluation process.

(4) The OTR or LOT may delegate to a COTA, LOTA or temporary licensee the collection of data for the assessment. The OTR or LOT is responsible for the accuracy of the data collected by the assistant.

(e) Plan of Care.

(1) Only an OTR, LOT or OT may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for a COTA/LOTA to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the patient

should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The OTR, LOT or OT and COTA, LOTA or OTA may work jointly to revise the short-term goals, but the final determination resides with the OTR or LOT. Revisions to the plan of care and goals must be documented by the OTR/LOT and/or COTA/LOTA to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners licensed by the Texas Board of Occupational Therapy Examiners (TBOTE) may implement the plan of care once it is established.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The OTR or LOT is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have face-to-face, real time interaction with the patient or client during the intervention process.

(8) Except where otherwise restricted by rule, the supervising OTR or LOT may only delegate to a COTA, LOTA or temporary licensee tasks that they both agree are within the competency level of that COTA, LOTA or temporary licensee.

(9) The COTA or LOTA must include the name of his or her supervising OTR or LOT in each treatment note. If there is not a current supervising OTR or LOT, the COTA or LOTA cannot treat.

(f) Discharge.

(1) Only an OTR or LOT has the authority to discharge patients from occupational therapy services. The discharge is based on whether the patient or client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services; or when other circumstances warrant discontinuation of occupational therapy services.

(2) The OTR or LOT is responsible for the content and validity of the discharge summary and must sign the discharge summary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2008.

TRD-200800687
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Effective date: February 25, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.3

The Texas Board of Occupational Therapy Examiners adopts the amendments to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant, without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9314) and will not be republished.

The amended section is adopted, in part, to clarify the manner in which a COTA/LOTA shall be supervised by a licensed occupational therapist. The amended section requires that the COTA/LOTA's hours be documented in a supervision log.

Two comments were received from individuals.

One comment contended that the supervisory regulations for COTAs were getting too extreme, and suggested that the Board only require a supervisory visit every 30 days. The Board disagrees. The Board thinks that the amendments to this section are not burdensome and will improve the supervision of COTAs and LOTAs. No changes were made in response to this comment.

The other comment supported the changes.

The amendments are adopted under the Occupational Therapy Act, Title 3, Chapter 454, Subchapter H of the Texas Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Texas Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2008.

TRD-200800688
John Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Occupational Therapy Examiners
Effective date: February 25, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 305-6900

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 17, concerning Campus Planning. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200800737
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 7, 2008

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 21, concerning Student Services. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200800738
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 7, 2008

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 22, concerning Grant and Scholarship Programs. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200800739
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 7, 2008

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 25, concerning Optional Retirement Program. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200800740
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 7, 2008

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Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission proposes to review its rules in 13 TAC Chapter 1 concerning library development pursuant to the requirements of the Government Code §2001.039.

The rules were adopted pursuant to the Government Code §441.136 that requires the Texas State Library and Archives Commission to adopt rules regarding the administration of the program of state grants, including qualifications for major resource system membership. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission administer grant programs, including the Texas Library Systems.

Written comments on the review of rules in 13 TAC Chapter 1 may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas 78711-2927. Faxed comments may be sent to (512) 463-8800.

TRD-200800802

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: February 11, 2008

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The Texas State Library and Archives Commission proposes to review its rules in 13 TAC Chapter 4 concerning school library programs pursuant to the requirements of the Government Code §2001.039.

The rules were adopted pursuant to the Education Code §33.021 that requires the Texas State Library and Archives Commission to adopt standards regarding school library programs. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment of standards for school library programs.

Written comments on the review of rules in 13 TAC Chapter 4 may be directed to Deborah Littrell, Director, Library Development Division, Box 12927, Austin, Texas 78711-2927. Faxed comments may be sent to (512) 463-8800.

TRD-200800801
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: February 11, 2008

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Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, concerning Central Administration, Chapter 5, concerning Funds Management (Fiscal Affairs), and Chapter 6, concerning Investment Management, pursuant to Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6567).

Relating to the review of Chapter 1, Subchapter A, Division 1, Subchapter E, and Subchapter F continue to exist and the comptroller readopts the sections without changes in accordance with the requirements of Government Code, §2001.039. As a result of the review, Chapter 1, Subchapter A, Division 2, §§1.51, 1.52, 1.54 - 1.56, 1.58 - 1.60 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. As a result of the review, Chapter 1, Subchapter A, Division 3, §1.71 will be repealed and §1.72 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act. As a result of the review, the comptroller will propose the repeal of all sections in Subchapters B, C, and D in a separate rulemaking in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 5, Subchapters A, B, D, and L continue to exist and the comptroller readopts the sections without changes in accordance with the requirements of Government Code, §2001.039. As a result of the review of Chapter 5, Subchapter C, §5.22, Subchapter E, §§5.51, 5.54, and 5.57, Subchapter F, §5.61, Subchapter N, §5.160 and Subchapter O, §5.200, will subsequently be amended in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 6, the comptroller finds that the reasons for adopting Chapter 6 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, Chapter 5, and Chapter 6.

TRD-200800742
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: February 7, 2008

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Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board (Board) adopts the review of Chapter 7, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9135). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are, therefore, readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 7 as required by the Texas Government Code, §2001.039.

TRD-200800729
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

♦ ♦ ♦

The Texas Higher Education Coordinating Board adopts the review of Chapter 8 concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community College Districts. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9135). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 8 as required by the Texas Government Code, §2001.039.

TRD-200800730
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

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The Texas Higher Education Coordinating Board adopts the review of Chapter 9 concerning Program Development in Public Two-Year Colleges. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9135). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 9 as required by the Texas Government Code, §2001.039.

TRD-200800731
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

♦ ♦ ♦

The Texas Higher Education Coordinating Board (Board) adopts the review of Chapter 10, concerning Institutional Effectiveness in Public Two-Year Colleges. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9135). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are, therefore, readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 10 as required by the Texas Government Code, §2001.039.

TRD-200800732
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

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The Texas Higher Education Coordinating Board adopts the review of Chapter 11 concerning Texas State Technical College System. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9135). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are therefore readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 11 as required by the Texas Government Code, §2001.039.

TRD-200800733
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

♦ ♦ ♦

The Texas Higher Education Coordinating Board (Board) adopts the review of Chapter 12, concerning Career Schools and Colleges. The proposed notice of review was published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9136). During its review, the Board determined that the initial reasons for adopting these sections continue to exist. The rules are, therefore, readopted in accordance with the requirements of the Government Code, §2001.039.

This concludes the Board's review of Chapter 12 as required by the Texas Government Code, §2001.039.

TRD-200800734
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 6, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lake Nacogdoches (Nacogdoches)	5	16	Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.		18	

Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch Slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted.			
Lake Alan Henry (Garza).	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.

Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No limit	
Carp: common.			
Lady Bird Lake (Travis)	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	

Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			

Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Assistive and Rehabilitative Services

Notice of Public Hearing

The Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing from 2:00 p.m. to 4:00 p.m. on Thursday, March 13, 2008, in Conference Room 250 of the DARS Administration Building at 4800 North Lamar Boulevard in Austin, Texas, to receive public comments on the proposed FY 2008-2009 Maximum Allowable Payment Schedule (MAPS) rates used for the purchase of medical and medical-related services. The proposed implementation date for the new MAPS rates is April 1, 2008.

The schedule of proposed rates may be viewed or copies may be obtained by calling Stuart McPhail with DARS at (512) 424-4144 or visiting DARS at the Brown Heatly Building at 4900 North Lamar, Austin, Texas 78751.

Written comments on the proposed rates may be submitted to Stuart McPhail, Department of Assistive and Rehabilitative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-200800878
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Department of Assistive and Rehabilitative Services
Filed: February 13, 2008

♦ ♦ ♦

Office of the Attorney General

Deadline to Submit Comments on House Bill 3430 Proposed Guidelines

The Office of the Attorney General (OAG) published the House Bill 3430 Small Business Impact Proposed Guidelines in the February 1, 2008 issue of the *Texas Register* (33 TexReg 985). The OAG will develop Final Guidelines in response to any comments received within 30 days of the publication. Accordingly, the deadline to submit written comments to the OAG on the Proposed Guidelines is **Monday, March 3, 2008**.

To submit comments regarding the Proposed Guidelines, please contact:

Jeb Boyt

Assistant Attorney General

Office of the Attorney General

(512) 475-4200

(512) 474-1062 (fax)

jeb.boyt@oag.state.tx.us

TRD-200800728
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 6, 2008

♦ ♦ ♦

Notice of Settlement of Texas Hazardous Waste Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Office of the Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in *State of Texas v. Texas Molecular (TM) Corpus Christi Services, L.P.*; Cause No. D1-GV-07-001054, 250th Judicial District, Travis County, Texas.

Background: This suit alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Solid Waste Disposal Act for violations related to the endangerment of the public health and welfare. The Defendant is Texas Molecular (TM) Corpus Christi Services, L.P. The suit seeks civil penalties, attorney's fees, and court costs.

Nature of Settlement: The settlement awards $200,00.00 in civil penalties and $24,858.75 in attorney's fees to the State. Of the settlement amount awarded, $100,000 of the civil penalty will be deferred contingent on the Defendant contributing $100,000 to three Supplemental Environmental Projects in Nueces County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice in the *Texas Register* to be considered.

TRD-200800836
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 12, 2008

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 1, 2008, through February 7, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 13, 2008. The public comment period for this project will close at 5:00 p.m. on March 14, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Rowan Marine Services; Location: The project is located on Sabine River, at 8010 South First Avenue, in Sabine Pass, Jefferson County, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 413935; Northing: 3290301. Project Description: The applicant proposes to replace an existing bulkhead with a new steel-pipe bulkhead immediately seaward of the existing bulkhead in the Sabine River. The new bulkhead will consist of linked 42 to 48-inch outside diameter steel pipe piles, tied back to a deadman wall, approximately 100 feet behind the existing bulkhead. The initial phase of the repairs will include about 400 feet of new bulkhead with an additional 600 feet in later stages. The gap between the walls will be filled with an estimated 6,700 cubic yards of material; and less than 0.3 acre of surface area of wetlands will be filled. The purpose is to repair the existing bulkhead. CCC Project No.: 08-0067-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-01964 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Mr. Maxey and Dr. Frances Mayo; Location: The project is located in Aransas Bay, at 1900 Bayshore Drive, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 694110; Northing: 3102800. Project Description: The applicant proposes to restore eroded land under and immediately adjacent to their residential house to prevent ongoing damage to the residence foundation. The proposed work consists of the installation of a 4.5-foot-high by 118-foot-long perimeter riprap breakwater and subsequent backfilling with approximately 385 cubic yards of fill material to an elevation of approximately 4.5 feet above the bay bottom. The proposed project will displace an approximate 3,000-square-foot tidal area under and waterward of the existing pile-supported portion of the residence. CCC Project No.: 08-0068-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1848 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located in Trinity Bay State Tract (ST) 48, approximately 10.2 miles southeast of Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 320259; Northing: 3282189. Project Description: The applicant proposes to lay and maintain a pipeline up to 6 inches in diameter from ST 48 Well No. 2 approximately 1,086 feet to ST 48 Well No. 1 ("LINE D"). The installation of "LINE D", between Wells 1 and 2 would result in the displacement of approximately 650 cubic yards of material. The applicant is also requesting authorization to lay and maintain a pipeline up to 6 inches in diameter from said Well #1 to one of the following points: "LINE A" Option - This option would involve a pipeline approximately 18,687 feet in length that would connect to an existing Davis Petroleum 8-inch Umbrella Point pipeline in ST 90. This option would result in the approximately 11,100 cubic yards of sediment displacement. "LINE B" Option - This option would involve a pipeline approximately 18,231 feet in length that would connect to an existing Sandridge Energy platform in ST 74. This option would result in the approximately 10,800 cubic yards of sediment displacement. "LINE C" Option - option would involve a pipeline approximately 7,854 feet in length connecting to an existing Yuma Petroleum platform in ST 69. This option would result in the approximately 4,700 cubic yards of sediment displacement. CCC Project No.: 08-0069-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-01555 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200800841
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 13, 2008

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Comptroller of Public Accounts

Notice of Award

The Comptroller of Public Accounts, State Energy Conservation Office (SECO) announces this notice of award for energy engineering services for the Local Government Program.

Three contracts were awarded to the following:

1. Carter & Burgess, Inc., 777 Main Street, Fort Worth, Texas 76102. The total amount of the contract is not to exceed $300,000.00. The term of the contract is February 11, 2008 through August 31, 2008.

2. Texas Energy Engineering Services, Inc., 1301 Capital of Texas Highway, Austin, Texas 78746. The total amount of the contract is not to exceed $200,000.00. The term of the contract is February 11, 2008 through August 31, 2008.

3. ESA Energy Systems Associates, Inc., 100 East Main, Suite 201, Round Rock, Texas 78664. The total amount of the contract is not to

exceed $200,000.00. The term of the contract is February 11, 2008 through August 31, 2008.

The notice of request for proposals (RFP #180f) was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6656).

TRD-200800810
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: February 11, 2008

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/08 - 02/24/08 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/08 - 02/24/08 is 18% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200800809
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 11, 2008

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Deep East Texas Local Workforce Development Board

Request for Quotes

Workforce Solutions Deep East Texas is seeking quotes from qualified entities for monitoring of subcontractors.

The Board was organized in October 1996 under Texas SB 642 and HB 1863 to plan and oversee an integrated workforce system in the Deep East Texas Workforce Development Area (WDA). The WDA is a 12-county, rural area that includes Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler Counties. Workforce programs under the Board's purview are the Workforce Investment Act, TANF/Choices, Food Stamp Employment and Training, Project RIO, Trade Act, Employment Services, and subsidized child care. Additional information on the Board can be accessed at the Board's website www.detwork.org.

The period of performance shall be May 1, 2008 through April 30, 2009.

Request for Quotes (RFQ) release date: 8:00 a.m., Friday, February 8, 2008.

A Bidder's Conference will be held in the Board Conference Room, 539 S. Chestnut, Suite 300, Lufkin, Texas at 2:00 p.m. CST on February 21, 2008. Attendance at the bidder's conference is not mandatory but is highly recommended. Attendance may be in person or via teleconference. Potential bidders should contact Chris Gaston prior to 5:00 p.m. CST on February 19, 2008 to arrange to participate in the teleconference. Bidders will have an opportunity to ask questions concerning the procurement. Questions may be asked at the bidder's conference or written questions may be submitted by 5:00 p.m. CST on February 19, 2008 via email to Chris Gaston at chris.gaston@twc.state.tx.us or via fax at (936) 633-7491.

Deadline for submission of proposals: 3:00 p.m., March 7, 2008.

RFQ can be accessed at www.detwork.org or requests for copies of the RFQ can be made to:

Chris Gaston, Procurement/Contract Manager

Workforce Solutions Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

Telephone: (936) 639-8898

Fax: (936) 633-7491

Email: chris.gaston@twc.state.tx.us

TRD-200800780
Chris Gaston
Procurement/Contract Manager
Deep East Texas Local Workforce Development Board
Filed: February 8, 2008

♦ ♦ ♦

Texas Education Agency

Notice of Correction: Request for Applications Concerning the 2007-2009 Rural Technology Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) Concerning the 2007-2009 Rural Technology Grant, RFA #701-08-106, in the February 1, 2008, issue of the *Texas Register* (33 TexReg 991).

The TEA is amending the dates of the project. The Rural Technology Grant pilot program will be implemented during the 2007-2008, 2008-2009, and 2009-2010 school years. This correction reflects a change from the original project dates of the 2007-2008 and 2008-2009 school years.

The ending date of the project has also been revised to reflect the amended project dates. Applicants should plan for an ending date of no later than May 31, 2010. This correction reflects a change from the original ending date of no later than August 31, 2009.

In addition, the title of the RFA has been updated to reflect the amended project dates. The corrected title is Request for Applications Concerning the 2007-2010 Rural Technology Grant.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269.

TRD-200800848
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 13, 2008

♦ ♦ ♦

Request for Applications Concerning Student Excellence and Readiness through Volunteers in Education (SERVE), 2007-2008 and 2008-2009

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-132 from non-profit organizations to provide volunteers to enhance college and workforce readiness through classroom and after-school programs throughout the state.

Description. The Student Excellence and Readiness through Volunteers in Education (SERVE) program is designed to support organizations which provide volunteers to enhance college and workforce readiness through supplemental classroom and after-school programs. By creating or increasing the existing capacity of an organization to serve students using a volunteer core of interested community participants, the program should ultimately lead to higher levels of college and workforce readiness and lower dropout rates among participating students, as well as increased community involvement in education.

In order to be considered for funding, applicants must (1) describe how the organization will provide volunteers to teach curriculum in classroom or after-school programs to enhance college readiness, workforce readiness, dropout prevention, or personal financial literacy; (2) describe how applicant will provide trained volunteers to present a research-based curriculum in classroom or after-school programs to address college and workforce readiness, dropout prevention, or personal financial literacy; (3) describe how grant funds will be used to (a) recruit volunteers, (b) train newly-recruited volunteers, (c) provide ongoing training for participating volunteers, and (d) retain volunteers; (4) demonstrate an ability to provide grant services to students in districts throughout the state by describing the applicant's organizational structure and service region; (5) provide evidence that a majority of the students served with grant funds are considered at risk of dropping out of school; (6) provide services to at least 16,000 students statewide using grant funds; (7) describe both the proposed curriculum and proposed instructional methods to be used and provide evidence indicating how the proposed curriculum and instructional methods will assist students in the areas of college readiness, workforce readiness, dropout prevention, or personal financial literacy; and (8) describe how activities funded by the grant will help to build capacity by the organization and how the activities will be sustained after the grant has ended.

Dates of Project. The SERVE program will be implemented during the 2007-2008 and 2008-2009 school years. Applicants should plan for a starting date of no earlier than June 1, 2008, and an ending date of no later than August 15, 2009.

Project Amount. Funding will be provided for approximately one project. The project will receive a maximum of $500,000 for the grant period. This project is funded 100 percent from nonfederal sources.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Special consideration (or priority) will be given to applicants providing a comprehensive research-based curriculum encompassing all four curriculum elements: (1) college readiness, (2) workforce readiness, (3) dropout prevention, and (4) personal financial literacy. Priority consideration will also be given to applicants providing program-specific achievement data such as student self-assessments, educator feedback, and/or other appropriate data collection instruments which demonstrate that the proposed curriculum and instructional methods have a proven record of (1) improving the college and workforce readiness and personal financial literacy of students identified as being at risk of dropping out of school, and (2) reducing the likelihood of students dropping out of school. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Friday, March 28, 2008, to be eligible to be considered for funding.

TRD-200800842
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 13, 2008

Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 5, Year 1, RFA #701-08-107

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-107 for the Texas 21st Century Community Learning Centers Grant Program, Cycle 5, Year 1, from local educational agencies (LEAs) including public school districts, open-enrollment charter schools, and regional education service centers; community-based organizations (CBOs); and other public or private entities, nonprofit or for profit, or a consortium of two or more agencies, organizations, or entities to establish or expand community learning centers. Examples of agencies and organizations eligible under the Texas 21st Century Community Learning Centers Grant Program include, but are not limited to, nonprofit agencies, city or county government agencies, faith-based organizations, institutions of higher education, and for-profit corporations. A shared services arrangement (SSA) of two or more LEAs is also eligible to apply.

An application must designate the specific campus(es) that meet the eligibility requirements of the grant in order to determine the students and families to be served in the 21st Century Community Learning Center(s). Eligible campuses are those that qualify for schoolwide programs under Title I, Section 1114, or schools that have a high percentage of low-income families (40 percent or more students identified as economically disadvantaged). Centers can be located in elementary or secondary schools or similarly accessible facilities. Each community learning center may serve students from more than one eligible campus, but an eligible campus may not be served by more than one community learning center.

Description. The purpose of the Texas 21st Century Community Learning Centers Grant Program, Cycle 5, Year 1, is to provide opportunities beyond the normal school day for communities to establish or expand activities in community learning centers that (1) provide opportunities for academic enrichment, including providing tutorial services to help children, particularly students who attend low-performing schools, meet state and local student academic achievement standards in core academic subjects, such as reading and mathematics; (2) offer students a broad array of additional services, programs and activities, such as youth development activities; drug and violence prevention programs; counseling programs; art, music, and physical education and fitness programs; and technology education programs that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development. Program services must be offered only when schools are not in session (before or after school, during holidays, or during summer recess). The program must be carried out in active collaboration with the schools the students attend. Applications must provide for partnerships between an LEA, a CBO, and other public or private organizations, if appropriate.

Dates of Project. Applicants should plan for a starting date of no earlier than August 1, 2008, and an ending date of no later than July 31, 2009. Applicants must begin the operation of the community learning centers no later than September 8, 2008, for the 2008-2009 school year.

Project Amount. Approximately $24 million is available for funding during the 2008-2009 school year and the summer of 2009. The grant request may not be less than $50,000 or greater than $100,000 per community learning center. Project funding in the second and third years will be based on satisfactory progress of the first and second year objectives and activities, respectively; on general budget approval by the U.S. Congress; the number of centers established; the number of students and campuses served by each center; and on the activities to be implemented during out-of-school time throughout the grant period. This project is funded 100 percent from 21st Century Community Learning Center federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA and receive a basic average score of above 70 percent of the total points to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicant's Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from the TEA about the scope of the Texas 21st Century Community Learning Centers Grant Program, Cycle 5, Year 1, on Monday, March 3, 2008, from 1:00 p.m. until 3:00 p.m. on the Texas Educational Telecommunication Network (TETN) available at each regional education service center. The conference will be videotaped. Pre-conference questions may be sent to vicki.logan@tea.state.tx.us prior to March 3, 2008. Each person attending will be required to sign a register setting out the representative's name and the name, address, and telephone number of the applicant organization represented. Prospective applicants who are not able to attend the Applicant's Conference may request a copy of the videotape at no charge from the TEA Division of Discretionary Grants using the contact information that follows.

Requesting the Application. A complete copy of RFA #701-08-107 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9269; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Vicki Logan, Division of Discretionary Grants, Texas Education Agency, (512) 475-4468. In order to ensure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, April 17, 2008, to be eligible to be considered for funding.

TRD-200800843
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 13, 2008

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section

7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 24, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 24, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Builders Marble Company; DOCKET NUMBER: 2007-1433-AIR-E; IDENTIFIER: RN104491055; LOCATION: Farmersville, Collin County, Texas; TYPE OF FACILITY: synthetic marble products manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §122.146(1) and (2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit the required annual compliance certification; 30 TAC §§101.20(2), 116.115(c), and 122.143(4), Permit Number 74386, Special Condition (SC) Number 5, and THSC, §382.085(b), by failing to submit an initial notification of applicability to 40 Code of Federal Regulations (CFR) Part 63, Subpart WWWW; 30 TAC §§101.20(2), 116.115(c), and 122.143(4), Permit Number 74386, SC Number 5, and THSC, §382.085(b), by failing to submit semiannual reports; 30 TAC §116.115(c), Permit Number 74386, SC Number 10(c), and THSC, §382.085(b), by failing to properly maintain a recordkeeping system; and 30 TAC §116.115(c), Permit Number 74386, SC Number 4, and THSC, §382.085(b), by failing to physically identify and mark all equipment that has the potential to emit air contaminants on a conspicuous location with the facility identification numbers; PENALTY: $13,860; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Barney M. Davis, LP; DOCKET NUMBER: 2007-1570-AIR-E; IDENTIFIER: RN100642040; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: electricity generation plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and §116.115(c), Air Permit Number 1177, SC Number 4, and THSC, §382.085(b), by failing to prevent an excess opacity event; and 30 TAC §101.201(e) and THSC, §382.085(b), by failing to report an excess opacity event within 24 hours; PENALTY: $2,470; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Davis Gas Processing, Inc.; DOCKET NUMBER: 2007-1620-AIR-E; IDENTIFIER: RN100245182 and RN100227735; LOCATION: Crockett and Callahan Counties, Texas; TYPE OF FACILITY: natural gas processing plants; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit an annual emissions inventory update for the 2006 calendar year for the Neleh Gas System and the Shackelford Gas Plant; PENALTY: $5,225; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479; 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: City of Eldorado; DOCKET NUMBER: 2007-1848-MSW-E; IDENTIFIER: RN102142999; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.137 and Permit Number 2264, Part IV-Site Operating Plan (SOP) (k), by failing to display required lettering information on landfill signs found at all entrances through which wastes are received; 30 TAC §330.139 and Permit Number 2264, Part IV-SOP (1), by failing to maintain the working face in a manner as to control windblown solid waste; 30 TAC §330.165(a) and (b) and Permit Number 2264, Part IV-SOP (y), by failing to provide daily cover to the working face of the landfill and by failing to provide intermediate cover to inactive portions of the landfill; 30 TAC §330.165(h) and Permit Number 2264, Part IV-SOP (y)(7), by failing to maintain a cover application record on site and make it readily available for inspection; 30 TAC §330.167 and Permit Number 2264, Part IV-SOP (z), by failing to control ponded water on the landfill surface; 30 TAC §330.11(b), by failing to provide written notice to the executive director of any changes concerning waste management methods; and 30 TAC §330.305(b) and Permit Number 2264, Part III-Site Development Plan (g), by failing to maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge; PENALTY: $4,810; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(5) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-1637-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 18287, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,775; Supplemental Environmental Project (SEP) offset amount of $6,887 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2007-0581-MLM-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§106.4(c), 113.120, 122.143(4), and 335.4, Federal Operating Permit (FOP) Number O-02288, Special Terms and Conditions (STC) Numbers 1D, 16, and 17, 40 CFR §63.135(b), the Code, §26.121(c), and THSC, §382.085(b), by allowing unauthorized emissions to the atmosphere and causing an unauthorized discharge to the soil; and 30 TAC §116.115(c) and §122.143(4), FOP Number O-01320, STC Number 13, New Source Review (NSR) Permit Number 5952A, SC Number 1, NSR Permit Number 19823, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $23,775; Supplemental Environmental Project (SEP) offset amount of $9,510 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Jesus Martinez dba Ideal Landscapes; DOCKET NUMBER: 2007-1647-LII-E; IDENTIFIER: RN105324222; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold a landscape irrigator license prior to advertising, selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system or representing to the public that he could perform a service for which a license is required; PENALTY: $625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: Liberty Pressure Pumping, L.P.; DOCKET NUMBER: 2007-1722-AIR-E; IDENTIFIER: RN105276521; LOCATION: Bluff Dale, Erath County, Texas; TYPE OF FACILITY: bulk sand loading plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain permit authorization prior to the construction of a new facility which emits air contaminants; PENALTY: $4,200; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Mo Vac Service Company of Alice; DOCKET NUMBER: 2007-1721-PST-E; IDENTIFIER: RN101905529; LOCATION: Kenedy, Karnes County, Texas; TYPE OF FACILITY: transport trucking refueling; RULE VIOLATED: 30 TAC §334.75(a)(1), by failing to report a release of diesel fuel; and 30 TAC §334.129(a), by failing to comply with the release investigation and corrective action requirements for a release of diesel fuel; PENALTY: $8,600; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: City of Petrolia; DOCKET NUMBER: 2007-1794-PWS-E; IDENTIFIER: RN102677937; LOCATION: Petrolia, Clay County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: $605; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: City of Plano; DOCKET NUMBER: 2007-1644-WQ-E; IDENTIFIER: RN103099156; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of sewage into water in the state; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2007-1437-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 8838, SC Number 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event which occurred at Tank 320; 30 TAC §115.722(c) and §116.115(c), Air Permit Number 8838, SC 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event which occurred at the propylene vaporizer; 30 TAC §116.115(c), Air Permit Number 8838, SC 1, and THSC, §382.085(b), by failing to maintain compliance with emission limits; and 30 TAC §116.115(c), Air Permit Number 8838, SC 1, and THSC, §382.085(b), by failing to maintain compliance with emission limits; PENALTY: $85,500; Supplemental Environmental Project (SEP) offset amount of $34,200 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Southside Place; DOCKET NUMBER: 2007-1760-MWD-E; IDENTIFIER: RN101384758; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $3,600; Supplemental Environmental Project (SEP) offset amount of $2,880 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: SSP Partners dba Stripes 2167; DOCKET NUMBER: 2007-1446-PST-E; IDENTIFIER: RN101625655; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(9)(A)(iv) and §334.72(3)(B), by failing to report a suspected release; §334.74(1), by failing to investigate a suspected release; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks; PENALTY: $11,350 Supplemental Environmental Project (SEP) offset amount of $4,540 applied to Beautify Corpus Christi Association-Cleanup of Illegal Dump Sites; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2007-1580-PWS-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $752; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Weirich Bros., Inc.; DOCKET NUMBER: 2007-1489-AIR-E; IDENTIFIER: RN101935492; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: wet sand and gravel processing plant; RULE VIOLATED: 30 TAC §106.143 and THSC, §382.085(b), by failing to achieve maximum control of dust emissions from permanent in-plant roads at the site; PENALTY: $1,320; ENFORCEMENT COORDINATOR: Sidney Wheeler, (210) 490-3096; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200800812
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Enforcement Orders

A default order was entered regarding Marcos Mariscal, Docket No. 2003-0302-MSW-E on February 8, 2008 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Venus, Docket No. 2002-1302-MLM-E on February 8, 2008 assessing $17,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Honey Stop Food Marts, Inc. formerly known as Honey Stop Properties, Inc., Docket No. 2003-0971-PST-E on February 8, 2008 assessing $86,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Waco, Docket No. 2004-0295-MLM-E on February 8, 2008 assessing $8,412 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark McKillip, Docket No. 2004-0443-IHW-E on February 8, 2008 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KC Materials, Inc., Docket No. 2004-1073-WQ-E on February 8, 2008 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jesus Jorge Flores dba Corner Stop, Docket No. 2004-1232-PST-E on February 8, 2008 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ali Bukhari dba Honey Stop and Sue Bukhari dba Honey Stop, Docket No. 2004-1803-PST-E on February 8, 2008 assessing $1,090 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edward Jong Kim dba D&J Grocery, Docket No. 2004-2067-PST-E on February 8, 2008 assessing $18,190 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marfa, Docket No. 2005-0076-MWD-E on February 8, 2008 assessing $1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Price Construction, Ltd., Docket No. 2005-0295-AIR-E on February 8, 2008 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of the Air Force, Docket No. 2005-0964-WQ-E on February 8, 2008 assessing $2,309 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hussain Mohammad Dhanji dba Bill's Drive In, Docket No. 2005-1344-PST-E on February 8, 2008 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ali's Grocery, Inc. dba Raadiyah Chevron, Docket No. 2005-1422-PST-E on February 8, 2008 assessing $1,940 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mountain Breeze L.L.C., Docket No. 2005-1466-PWS-E on February 8, 2008 assessing $5,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jogesh Amin dba Sema Texaco, Docket No. 2005-1522-PST-E on February 8, 2008 assessing $9,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Circle K Stores Inc., Docket No. 2005-1696-AIR-E on February 8, 2008 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red Dog Track, Inc., Docket No. 2005-1884-AIR-E on February 8, 2008 assessing $31,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2005-2011-AIR-E on February 8, 2008 assessing $32,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galveston, Docket No. 2006-0019-MWD-E on February 8, 2008 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Majeed Arshad dba The Eagle Stop, Docket No. 2006-0388-PST-E on February 8, 2008 assessing $11,322 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOE Water Supply Corporation, Docket No. 2006-0405-PWS-E on February 8, 2008 assessing $629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines East Texas L.P., Docket No. 2006-0527-AIR-E on February 8, 2008 assessing $10,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Marcantel, Docket No. 2006-0554-SLG-E on February 8, 2008 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Desi Services Incorporated dba Silver Cleaners, Docket No. 2006-0841-DCL-E on February 8, 2008 assessing $889 in administrative penalties with $178 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Puthy Chea dba Alpine Cleaners, Docket No. 2006-1053-DCL-E on February 8, 2008 assessing $889 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ken Young dba Paramount Cleaners, Docket No. 2006-1118-DCL-E on February 8, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mai Bui Nguyen dba Superior Cleaners and dba Country Cleaners, Docket No. 2006-1158-DCL-E on February 8, 2008 assessing $2,667 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Nguyen dba K & K Dry Cleaners, Docket No. 2006-1183-DCL-E on February 8, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Eddie Beale dba Johnsons Tire Service, Docket No. 2006-1217-MSW-E on February 8, 2008 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding River Oaks Brothers, Inc. dba River Oaks Cleaners, Docket No. 2006-1244-DCL-E on February 8, 2008 assessing $1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gerry L. Woods dba Ruby's Laundry Dry Cleaners, Docket No. 2006-1403-DCL-E on February 8, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nhan Q. Ha dba 7-7 Cleaners and Alterations, Docket No. 2006-1445-DCL-E on February 8, 2008 assessing $1,209 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 125 Max Drycleaning Center, LLC dba 1.25 Max Dryclean, Docket No. 2006-1497-DCL-E on February 8, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sung Ja Hwang dba Jasper Cleaners, Docket No. 2006-1499-DCL-E on February 8, 2008 assessing $853 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Billy C. Jones dba National Dry Cleaners, Docket No. 2006-1559-DCL-E on February 8, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pathan Investments, Inc. dba Time Out, Docket No. 2006-1568-PST-E on February 8, 2008 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2006-1576-AIR-E on February 8, 2008 assessing $93,009 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Del Sol Development, Inc., Docket No. 2006-1745-WQ-E on February 8, 2008 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jesse J. Garcia dba Longhorn Sandblasting, Docket No. 2006-1807-MLM-E on February 8, 2008 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conners Construction, Inc., Docket No. 2006-1852-AIR-E on February 8, 2008 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Airtex Investments, Inc. dba Time Mart 10, Docket No. 2006-1880-PST-E on February 8, 2008 assessing $6,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Murchison, Docket No. 2006-1934-MWD-E on February 8, 2008 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Daniel dba Mikes Tire, Docket No. 2006-1945-MSW-E on February 8, 2008 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Brendan L. Wachtendort, Docket No. 2006-2040-LII-E on February 8, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jarrod L. Meyer, Docket No. 2007-0048-LII-E on February 8, 2008 assessing $625 in administrative penalties with $125 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gary Lee Humelsine, Docket No. 2007-0109-LII-E on February 8, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose J. Espinoza, Docket No. 2007-0112-EAQ-E on February 8, 2008 assessing $14,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer MaterialScience LLC, Docket No. 2007-0116-AIR-E on February 8, 2008 assessing $6,350 in administrative penalties with $1,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hebert Construction Services, Inc., Docket No. 2007-0123-MLM-E on February 8, 2008 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dale Craghead dba Col-Tex Stations, Docket No. 2007-0173-PST-E on February 8, 2008 assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Adrian Lionel Villarreal, Docket No. 2007-0261-LII-E on February 8, 2008 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jong Hwan Oh dba J. C. Phillips, Docket No. 2007-0285-PST-E on February 8, 2008 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817)588-5833, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alberto Ramos Jr., Docket No. 2007-0406-LII-E on February 8, 2008 assessing $866 in administrative penalties with $173 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stockdale, Docket No. 2007-0487-MWD-E on February 8, 2008 assessing $8,060 in administrative penalties with $1,612 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Brooks Special Company, Docket No. 2007-0495-PST-E on February 8, 2008 assessing $12,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nicolas Amezquita, Docket No. 2007-0559-LII-E on February 8, 2008 assessing $656 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Carnes, Docket No. 2007-0570-PST-E on February 8, 2008 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rocky Hunt, Docket No. 2007-0587-LII-E on February 8, 2008 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lukes Mobile Home Park, Inc., Docket No. 2007-0621-PWS-E on February 8, 2008 assessing $1,750 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc. dba Aqua Texas, Inc., Docket No. 2007-0691-MWD-E on February 8, 2008 assessing $12,650 in administrative penalties with $2,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flying J Inc. dba Flying J Travel Plaza Orange, Docket No. 2007-0702-PST-E on February 8, 2008 assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angus Mims dba Rusk Realty, Docket No. 2007-0710-PST-E on February 8, 2008 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texmark Chemicals, Inc., Docket No. 2007-0796-AIR-E on February 8, 2008 assessing $75,692 in administrative penalties with $15,138 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Invista S.a.r.l., Docket No. 2007-0800-AIR-E on February 8, 2008 assessing $2,975 in administrative penalties with $595 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cantu-Alaniz-Martinez, Inc. dba Tiger Mark II, Docket No. 2007-0801-PST-E on February 8, 2008 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-0812-AIR-E on February 8, 2008 assessing $94,050 in administrative penalties with $18,810 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Stone of Texas, Inc., Docket No. 2007-0877-IWD-E on February 8, 2008 assessing $10,934 in administrative penalties with $2,186 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Five Nine Seven Limited Partnership dba Ramblewood Mobile Home Park, Docket No. 2007-0891-MWD-E on February 8, 2008 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy W. Askins, Docket No. 2007-0898-OSI-E on February 8, 2008 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Westex Capital, Ltd., Docket No. 2007-0910-WQ-E on February 8, 2008 assessing $3,210 in administrative penalties with $642 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Warren Independent School District, Docket No. 2007-0915-MWD-E on February 8, 2008 assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kia Enterprises, Inc. dba Iffi Stop 1, Docket No. 2007-0918-PWS-E on February 8, 2008 assessing $760 in administrative penalties with $152 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Forest Products, L.L.C., Docket No. 2007-0929-MLM-E on February 8, 2008 assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Billy Derouen, Docket No. 2007-0959-PST-E on February 8, 2008 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Galena Park, Inc., Docket No. 2007-0965-IWD-E on February 8, 2008 assessing $3,900 in administrative penalties with $780 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Stone Inc., Docket No. 2007-0977-EAQ-E on February 8, 2008 assessing $13,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pulte Homes of Texas, L.P., Docket No. 2007-0992-MSW-E on February 8, 2008 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Fort Worth Rail Terminal LLC, Docket No. 2007-1002-AIR-E on February 8, 2008 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan J. Rodriguez dba Camp Cleaners, Docket No. 2007-1006-DCL-E on February 8, 2008 assessing $670 in administrative penalties with $134 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2007-1017-PWS-E on February 8, 2008 assessing $740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2007-1018-MSW-E on February 8, 2008 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lubbock, Docket No. 2007-1021-IWD-E on February 8, 2008 assessing $4,350 in administrative penalties with $870 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Prosper, Docket No. 2007-1024-MWD-E on February 8, 2008 assessing $8,960 in administrative penalties with $1,792 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Bandy Construction, Inc., Docket No. 2007-1027-WQ-E on February 8, 2008 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-1062-AIR-E on February 8, 2008 assessing $24,522 in administrative penalties with $4,904 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Halliburton Energy Services, Inc., Docket No. 2007-1071-IWD-E on February 8, 2008 assessing $2,820 in administrative penalties with $564 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gabino Olmos dba Olmos Trucking & Hauling, Docket No. 2007-1085-WQ-E on February 8, 2008 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arp, Docket No. 2007-1115-PWS-E on February 8, 2008 assessing $372 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Keith Boyd Martin dba Cyclone Enterprises, Docket No. 2007-1142-LII-E on February 8, 2008 assessing $262 in administrative penalties with $52 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend County Municipal Utility District No. 116, Docket No. 2007-1180-MWD-E on February 8, 2008 assessing $2,580 in administrative penalties with $516 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Signal Hill Wichita Falls Power, LP, Docket No. 2007-1192-AIR-E on February 8, 2008 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2007-1204-AIR-E on February 8, 2008 assessing $10,350 in administrative penalties with $2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Republic Plastics, Ltd., Docket No. 2007-1216-AIR-E on February 8, 2008 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Liberty, Docket No. 2007-1359-MWD-E on February 8, 2008 assessing $3,350 in administrative penalties with $670 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tutle & Tutle Trucking, Inc. dba TNT Trucking, Docket No. 2007-1369-PST-E on February 8, 2008 assessing $790 in administrative penalties with $158 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dionysus Group L.L.L.P. dba The Vineyard at Florence Section 1, Docket No. 2007-1386-EAQ-E

on February 8, 2008 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Marshall Hubbard, Docket No. 2007-1563-OSI-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Annona Manufacturing Company, Docket No. 2007-1827-PST-E on February 8, 2008 assessing $5,075 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kerrville Fast Wash, Inc. dba Five Points Chevron, Docket No. 2007-0454-PST-E on February 8, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Skyway Business, Inc. dba Eagle Mart 3, Docket No. 2007-1690-PST-E on February 8, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Performance food Group of Texas, Inc., Docket No. 2007-0458-PST-E on February 8, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Meador Chrysler-Plymouth, Inc. dba Meador Chrysler Jeep, Docket No. 2006-0639-PST-E on February 8, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lube Center Management LTD. dba Jiffy Lube 699, Docket No. 2007-1692-PST-E on February 8, 2008 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding St. Marys Hall, Docket No. 2007-1398-PST-E on February 8, 2008 assessing $2,625 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Edna Derrick, Docket No. 2007-1717-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ruben D. Serna, Docket No. 2006-0895-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Samuel Dean Paddock, Docket No. 2007-1829-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rosendo Moreno, Docket No. 2007-1562-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Alex P. McCloskey, Docket No. 2007-1749-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Greg Maddox, Docket No. 2007-1702-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry G. Little, Docket No. 2007-1561-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Thomas R. Lansford Jr., Docket No. 2007-1361-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Eldon Blount Construction dba Castle Ridge Estates, Docket No. 2007-1703-WQ-E on February 8, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Jay Mills Contracting Incorporated, Docket No. 2007-1704-WQ-E on February 8, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Shepherd Place Homes, Inc. dba Shepherd Place Homes Shamrock Ridge, Docket No. 2007-1691-WQ-E on February 8, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rosendo Moreno, Docket No. 2007-1562-WOC-E on February 8, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Panorama Properties, Ltd. dba Cadence Custom Homes Strathmore, Docket No. 2007-1689-WQ-E on February 8, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ammar Food, Inc. dba Sunrise Food Mart, Docket No. 2004-0555-PST-E on February 4, 2008 assessing $31,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200800846
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 13, 2008

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Notice of Amendment of License

Notice is hereby given by the Texas Commission on Environmental Quality (TCEQ), Radioactive Material Division that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas. WCS provides commercial hazardous waste and radioactive substances management and disposal services at the radioactive substances storage and processing facility authorized under Radioactive Materials License L04971.

Amendment number 44 grants an extension from 365 days to 545 days for the Safety Light Corporation waste from the United States Environmental Protection Agency to be stored at the WCS site until it must be placed into interim storage, as described in the license, or transferred to an authorized recipient.

The TCEQ has determined that the amendment of the license and the terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a contested case hearing upon written request within 30 days of the date of publication of this notice by a person affected. A person affected may request a hearing by writing Ms. Susan Jablonski, P.E., Director, Radioactive Materials Division, Texas Commission on Environmental Quality, P.O. Box 13087, Mail Code 233, Austin, Texas 78711. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "{I/we} request a contested case hearing." If the person is represented by an agent, the name and address of the agent must be stated. If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of the hearing request period, the Executive Director of the TCEQ will forward any requests for a contested case hearing to the TCEQ commissioners for their consideration at a scheduled commission meeting. Should no request for a public hearing be timely filed, the agency action will be final.

A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing, if granted, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the commission, and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Texas Commission on Environmental Quality, Radioactive Material Division, Building F, 12100 Park 35 Circle, Austin, Texas, telephone (512) 834-6466, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the doc-

uments may be obtained by contacting Hans Weger, Ph.D. at (512) 239-6465.

TRD-200800819
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 24, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 24, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City Concrete, Inc.; DOCKET NUMBER: 2005-1580-AIR-E; TCEQ ID NUMBER: RN101293041; LOCATION: 1204 28th Street, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a)(1) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization prior to operating a source of air emissions; PENALTY: $27,940; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2006-0429-AIR-E; TCEQ ID NUMBER: RN100218973; LOCATION: 201 Formosa Drive, Gate 3, Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: synthetic chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §101.20(3) and THSC, §382.085(b), by failing to prevent unauthorized emissions during emissions events that occurred on September 26, 2005, September 28, 2005, November 2, 2005, November 11, 2005, and April 24, 2006; 30 TAC §116.115(b)(2)(F), THSC, §382.085(b), and TCEQ Permit Number 19198 (Maximum Allowable Emission Rate Table), by failing to demonstrate compliance with applicable permit limits; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an accurate final record of an emissions event no later than two weeks after the end of the event; 30 TAC §102.20(3) and §116.115(c), THSC, §382.085(b), and TCEQ Permit Numbers 19198 and PSD-TX-760M6, Special Condition Number 11(B), by failing to properly test the Carbon Dioxide Regenerator Vent (Emission Point Number (EPN) 221) and the Ethylene Glycol Unit Waste Heat Boiler (EPN910) per the approved Environmental Protection Agency methods; 30 TAC §101.20(3) and §116.115(c), THSC, §382.085(b), and TCEQ Permit Number 19168, Special Condition Number 1, by failing to prevent the unauthorized release of air contaminants into the atmosphere; and 30 TAC §§101.20(2) and (3), 113.100, and 116.115(b)(2)(F), 40 Code of Federal Regulations §61.12(c) and §63.6(e), THSC, §382.085(b), and TCEQ Permit Number 7699/PSD-TX-226M6, Special Condition 1, by failing to maintain and operate the Vinyl Plant in a manner consistent with good air pollution control practices for minimizing emissions; PENALTY: $121,443; Supplement Environmental Project offset amount of $60,721 applied to City of Point Comfort Wastewater Treatment Plant Repair Assistance; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Mohinder Mashiana aka Mohinder Singh dba Lovely Food Mart; DOCKET NUMBER: 2005-1478-PST-E; TCEQ ID NUMBER: RN102240769; LOCATION: 704 East Byron Nelson Boulevard, Roanoke, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and Texas Water Code (TWC), §26.3475(c)(1), by failing to provide proper release detection for the underground storage tanks (USTs); 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of a regulated substance into a UST; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: $8,320; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: R & S Concrete, L.L.C.; DOCKET NUMBER: 2007-0882-IWD-E; TCEQ ID NUMBER: RN104367826; LOCATION: 1/4 mile off Farm-to-Market Road 521 on West Sycamore Street, near the City of Fresno, Fort Bend County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and General Permit Number TXG110601, Part III, Section A, Permit Requirements, by failing to comply with the permitted effluent limits; and TWC, §26.121(a) and General Permit Number TXG110601, Part IV, Standard Permit Conditions, Number 7(f), by failing to submit the discharge monitoring report for Outfall 001A for the fourth quarter monitoring period ending December 31, 2006, the Annual 24-Hour Acute Biomonitoring Report, and the Annual Metal Testing Report for the monitoring period ending February 28, 2006; PENALTY: $4,560; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Hous-

ton Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: The Shredder Company, LLC; DOCKET NUMBER: 2007-0960-AIR-E; TCEQ ID NUMBER: RN101241180; LOCATION: 7380 Doniphan Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: metal casting plant; RULES VIOLATED: 30 TAC §116.115(b)(1)(C), THSC, §382.085(b), and TCEQ Agreed Order Docket Number 2004-0847-AIR-E, by failing to amend The Shredder Company, LLC's New Source Review Permit Number 23499 to include authorization of an eight-ton capacity arc furnace (Leltro Melt, Serial Number 7705) as an emission source when a permit amendment was required; PENALTY: $40,560; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: United States Oil Recovery, L.P.; DOCKET NUMBER: 2006-1959-WQ-E; TCEQ ID NUMBER: RN100604677; LOCATION: 400 North Richey Street, Pasadena, Harris County, Texas; TYPE OF FACILITY: centralized waste treatment facility; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of contaminated storm water into and adjacent to Vince Bayou; and TWC, §26.121(a), by failing to take measures to prevent the unauthorized discharge of wastewater; PENALTY: $26,650; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200800813
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 24, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 24, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Anusha, Inc. dba CITGO Food Store; DOCKET NUMBER: 2005-1479-PST-E; TCEQ ID NUMBER: RN102432838; LOCATION: 6000 Antoine Drive, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: $2,140; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: George Williams; DOCKET NUMBER: 2007-0840-MLM-E; TCEQ ID NUMBER: RN105189526; LOCATION: 17189 Benton City Road, Von Ormy, Bexar County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized site; and 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: $2,000; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Leo Johnson dba Connally Center; DOCKET NUMBER: 2004-1858-PST-E; TCEQ ID NUMBER: RN101662930; LOCATION: 103 East Crest Drive, Waco, McClennan County, Texas; TYPE OF FACILITY: out-of-service UST system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(d)(2), by failing to empty the system of any residue from stored regulated substances which remained in the temporarily out-of-service UST system exceeding a depth of 2.5 centimeters at the deepest point; 30 TAC §334.54(b), by failing to cap, plug, lock and/or otherwise secure all piping, pumps, manways, tank access points, and ancillary equipment to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.7(d)(3) and Texas Water Code (TWC), §26.346, by failing to amend UST registration information within 30 days from the date on which the owner or operator first became aware of the change or addition; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at least once per month (not to exceed 35 days between each monitoring); PENALTY: $26,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Michael Lantz O'Neill dba Frontier Park Marina; DOCKET NUMBER: 2007-0712-PWS-E; TCEQ ID NUMBER: RN101183986; LOCATION: Highway 21, Toledo Bend Reservoir, Sabine County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(1), by failing to compile a plant operation manual and to keep it up to date for operator review and reference; 30 TAC §290.43(c)(4), by failing to provide a water level indicator on the ground storage tank at Water Plant Number 1; 30 TAC §290.44(a)(4), by failing to locate all water transmission and distribution lines at least 24 inches below ground surface; 30 TAC §290.121(a), by failing to maintain an up to date chemical and microbiological monitoring plan; 30 TAC §290.46(v), by failing to install all water system electrical wiring in accordance with a local or national electrical code; 30 TAC §290.46(t), by failing to post a legible sign at Water Plant Number 2 which gives the name of the owner and an emergency telephone number for contacting a responsible official; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage date; 30 TAC §290.44(d)(2), by failing to provide a working pressure gauge on the 1,000 gallon pressure tank at Water Plant Number 2; 30 TAC §290.46(m)(4), by failing to ensure all water system storage and pressure maintenance facilities and appurtenances are maintained in a water-tight condition; 30 TAC §290.109(c)(1)(A) and THSC, §341.033(d), by failing to collect routine bacteriological samples at active service connections which are representative of water throughout the distribution system; 30 TAC §290.46(f)(3)(A)(iv), by failing to record the dates of monthly dead-end flushing; 30 TAC §290.46(n)(2), by failing to provide an up to date map of the distribution system to help locate valves and mains in the event of an emergency; 30 TAC §290.45(b)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and (c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection for the community connections and 10 gallons per connection for non-community connections; 30 TAC §290.41(c)(3)(j), by failing to provide the well with a concrete sealing block around the well casing that extends a minimum of three feet in all directions; and 30 TAC §290.44(h)(1), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; PENALTY: $6,670; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200800814
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Notice of Public Meeting on March 27, 2008, in Saginaw, Tarrant County, Texas Concerning the Hicks Field Sewer Corporation Proposed State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the intent to take no further action at the Site and to delete the Site from its proposed-for-listing status on the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ) is issuing this public notice of intent to take no further action at the Hicks Field Sewer Corporation proposed state Superfund site (the Site) and to delete the Site from its proposed-for-listing status on the state Superfund registry. The state Superfund registry is the list of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The ED is proposing this deletion because the ED has determined that, due to removal actions that have been performed, the Site no longer presents such an endangerment.

The Site is located 1.8 miles west of the intersection of United States (U.S.) Highway 81-287 and Farm to Market Road 156, or approximately one-mile east of the intersection of U.S. Business Route 287 and Hicks Field Road near Saginaw, Tarrant County, Texas. The Site also included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The Site is located approximately 2.5 miles northwest of Saginaw and consists of approximately 3.8 acres. Two sludge drying beds, two surface impoundments, and two concrete separator tanks were used by the Hicks Field Sewer Corporation from the early 1970's to approximately mid-1994 to provide sewage treatment services for the nearby Hicks Field Industrial Park.

Businesses that operated at the industrial park included a metal finisher, a container manufacturer, a storage tank fabricator, and a small trucking firm. The sewer corporation primarily processed domestic wastes from the industrial park. However, from the early 1970's until operations ceased in early 1981, the metal finisher located in the industrial park reportedly discharged process rinse waters containing metals to the sewer treatment facility. Elevated concentrations of cadmium, chromium, and zinc were found in the sediments remaining in the waste management units of the sewer treatment facility.

During 2006 and 2007, the TCEQ conducted excavation, treatment, and disposal of all soils and sediments containing metals concentrations above remediation goals. The waste management units were dismantled or filled with clean soil and graded to drain. Excavated areas were filled and graded to drain, and grass was planted by hydro-seeding throughout the property.

Notice will be recorded in the real property records of Tarrant County that the Site is appropriate for commercial/industrial land use, as defined in 30 TAC Chapter 350, the Texas Risk Reduction Program (TRRP). The Site was remediated to the TRRP commercial/industrial land use criteria for cadmium, chromium, and zinc. Confirmation samples were collected after soil removal to confirm that cleanup criteria in soil were met. The Site is not appropriate for residential use according to State risk reduction regulations applicable to the Site. The Site remains fenced.

As a result of the removal action that has been performed at the Site, the ED has determined that the Site no longer presents an imminent and substantial endangerment to public health and safety and the environment. Therefore, no further action is necessary at the Site; and the Site is eligible for deletion from its proposed-for-listing status on the state registry of Superfund sites as provided by 30 TAC §335.344(c).

The TCEQ will hold a public meeting to receive comments on the proposed deletion of the Site and the determination to take no further action. This public meeting will not be a contested case hearing within the meaning of Texas Government Code, Chapter 2001. The public meeting will be held on March 27, 2008, at 7:00 p.m., at the Saginaw City Hall Council Chambers, located at 333 West McLeroy Boulevard, Saginaw, Texas.

All persons desiring to make comments regarding the proposed deletion of the Site may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00

p.m. on March 26, 2008, and should be sent in writing to Jeffrey E. Patterson, Project Manager, TCEQ, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on March 27, 2008.

A portion of the record for this Site, including documents pertinent to the proposed deletion of the Site, is available for review during regular business hours at the Saginaw John Ed Keeter Public Library, located at 355 West McLeroy Boulevard, Saginaw, Texas 76179, phone number (817) 230-0300. Copies of the complete public record file may be obtained during regular business hours at the TCEQ's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available for persons with disabilities on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the TCEQ at (800) 633-9363 or (512) 239-3844. Requests should be made as far in advance as possible.

For further information about the public meeting, please contact Crystal Taylor at (800) 633-9363.

TRD-200800816
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of January 23, 2008 through February 3, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA UTILITIES INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011701001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located on Sulphur Gully, approximately one-half mile north of Wallisville Road and one mile east of C.E. King Parkway in Harris County, Texas.

CARGILL TURKEY PRODUCTION LLC which operates a poultry feed production facility, has applied for a major amendment to Permit No. WQ0004387000 to authorize an increase in the daily average flow from 3,000 gallons per day to 5,000 gallons per day; an increase in the daily maximum flow from 4,000 gallons per day to 10,000 gallons per day; a change in the main disposal method from evaporation to irrigation on 99 acres of Coastal Bermuda grass; and the disposal of air compressor blowdown via irrigation. The current permit authorizes the disposal of bolier blowdown, water softener regeneration water, air scrubber makeup water, and truck wash water at a daily average flow not to exceed 3,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 251 Berger Road, approximately 2,000 feet southeast of the intersection of Interstate Highway 35 and Berger Road, adjacent to and east of the railroad tracks, approximately 4.6 miles north of the City of Temple, Bell County, Texas.

CITY OF HOUSTON has applied for a major amendment to TPDES Permit No. WQ0010495078 to remove effluent limitations and monitoring requirements for total cyanide. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located south of and adjacent to Rankin Road and approximately 3,000 feet east of the Aldine-Westfield and Rankin Road intersection in the City of Houston in Harris County, Texas.

EASTLAND COUNTY WATER SUPPLY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0013726001 to remove the pond liner certification requirement from the permit. The current permit authorizes the discharge of treated filter backwash water from a potable water treatment plant at a daily average flow not to exceed 100,000 gallons per day. The facility is located 1.5 miles south of Interstate Highway 20 on Farm-to-Market Road 2461 in Eastland County, Texas.

FALLBROOK UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010919001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 811 West Road, Houston, Texas north of Halls Bayou, 1,300 feet south of West Road and 2,500 feet east of Stuebner-Airline Road (Veteran's Memorial Drive), and approximately 1.0 mile west of Interstate Highway 45 in Harris County, Texas.

FARM CATCH CATFISH PROCESSORS INC which operates a fish processing plant, has applied for a new permit, proposed Texas Land Application Permit (TLAP) No. WQ0004832000, to authorize the disposal of fish processing wastewater via irrigation of approximately 20 acres of on-site Coastal Bermuda and Rye grasses. The volume of process wastewater routed to the irrigation holding pond system shall not exceed a daily average flow of 45,600 gallons per day. The hydraulic application rate shall not exceed 0.81 acre-inches per acre irrigated per month. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located on the northeast side of the intersection of Farm-to-Market Road 161 and County Road 2987, Hughes Springs, Cass County, Texas. The facility and disposal site are located in the drainage area of Big Cypress Creek Below Lake O' the Pines, in Segment No. 0402 of the Cypress Creek Basin.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 321 has applied for a renewal of TPDES Permit No. WQ0013211001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 1,200 feet south of West Road and 6,000 feet west of Interstate Highway 45 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 365 has applied for a renewal of TPDES Permit No. WQ0013881001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 17110 Jarvis Road approximately 250 feet north of Jarvis Road and 3,150 feet east of Skinner Road in Harris County, Texas.

SOUTHERN MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011001001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 852 Rayford Road, approximately

3,500 feet north of Spring Creek and approximately 4,000 feet east of Interstate Highway 45 in Montgomery County, Texas.

SYNAGRO OF TEXAS CDR INC has applied for a minor amendment to Texas Commission on Environmental Quality (TCEQ) permit No. WQ0004590000 to reduce the sludge application rate from 12 dry tons per acre per year to 10.02 dry tons per acre per year on Field 1, 5.93 dry tons per acre per year on Field 2, 5.31 dry tons per acre per year on Field 3, 4.46 dry tons per acre per year on Field 4, and 2.26 dry tons per acre per year on Field 5. The facility is located approximately 1 1/2 miles northeast of Rock Island, Texas, on Highway Alternate 90 and County Road 118 South in Colorado County, Texas.

SYNAGRO OF TEXAS CDR INC has applied for a minor amendment to TCEQ permit No. WQ0004674000 to reduce the sludge application rate from 8.3 dry tons per acre per year on Fields 1-4 to 5.8 dry tons per acre per year on Field 1, 5.71 dry tons per acre per year on Field 2, 6.75 dry tons per acre per year on Field 3, and 7.3 dry tons per acre per year on Field 4. The facility is located adjacent to the west side of Farm-to-Market Road 194, approximately 1/2 mile north of the intersection of Farm-to-Market Road 194 and Highway 90, approximately 4.5 miles west of the City of Eagle Lake in Colorado County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to the TCEQ for a renewal of Permit No. WQ0011830001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via a non-public access subsurface conventional drainfield with a minimum area of 39,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in the Huntsville State Park in the general location between the service area and the Prairie Branch camping area, approximately six miles south of the City of Huntsville in Walker County, Texas.

THE DOW CHEMICAL COMPANY which operates a chemical manufacturing facility, with products including methylene diphenidiisocyanate, related polymers, thermoplastic resins, and thermosetting resins, has applied for a minor amendment to WQ0000663000 to authorize the shut down of existing plant operations and to incorporate a new Extended Polystyrene Foam production plant. The existing permit authorizes the discharge of process wastewater, storm water, utility water, and domestic wastewater at a daily average flow not to exceed 1,650,000 gallons per day via Outfall 001, and storm water runoff on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located at 550 Battleground Road (State Highway 134) on the east side of State Highway 134, approximately one-half mile north of State Highway 225 in the City of La Porte, Harris County, Texas.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a major amendment to TPDES Permit No. WQ0013457001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 5,000,000 gallons per day to an annual average flow not to exceed 7,000,000 gallons per day. The application also includes a request for a temporary variance to the existing water quality standards for the dissolved oxygen criterion for the receiving water, Denton Creek and the transition zone area for Grapevine Lake. The variance would authorize a three-year period to allow time for the applicant to perform a dissolved oxygen study to determine if a site specific standard is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located at 1687 U.S. Highway 377 north of Roanoke, approximately 1.5 miles north-northeast of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas.

TRS ENVIROGANICS INC has applied for a renewal of Permit No. WQ0004460000, which authorizes the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use. The land application site is located approximately 4 miles east of the intersection of Farm-to-Market Road 1410 and Farm-to-Market Road 61 at the intersection of Devers Road and Farm-to-Market Road 1410 in Liberty County, Texas.

US STEEL TUBULAR PRODUCTS INC which operates a facility for threading and inspecting tubulars (pipes) for the oil and field industry, has applied for a renewal of TPDES Permit No. WQ0004690000, which authorizes the discharge of storm water, hydrostatic test water, machinery wash water, and swedging water on an intermittent and flow variable basis via Outfalls 001 and 002; storm water, hydrostatic test water, machinery wash water, swedging water, and previously monitored effluent on an intermittent and flow variable basis via Outfall 003; ultrasonic test water and phosphate process water at a daily average flow not to exceed 10,000 gallons per day via internal Outfall 301; and storm water, hydrostatic test water, maintenance wash water, and swedging water on an intermittent and flow variable basis via Outfalls 004, 005, and 006. The applicant has requested a minor modification to remove Outfalls 001, 002, 004, 005, and 006 from this individual permit and obtain coverage under the TPDES Storm Water Multi-Sector General Permit. The facility is located on E. Mount Houston Road, approximately 0.25 miles west of Greens Bayou, 2.5 miles west E. Beltway 8, and 8 miles north of I-10, Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200800845
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 13, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission) on February 11, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Murmur Corporation; SOAH Docket No. 582-07-3620; TCEQ Docket No. 2006-0560-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Murmur Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200800847
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 13, 2008

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Public Notice - Shut Down/Default Order

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill, and overfill prevention and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill, and overfill prevention and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 24, 2008**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DOs is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 24, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Nel-Mark Properties, LLC dba Anjalo Food Mart; DOCKET NUMBER: 2007-0942-PST-E; TCEQ ID NUMBER: RN104213053; LOCATION: 7118 South New Braunfels Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: retail service station with sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (c)(4) and Texas Water Code (TWC), §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly and by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances, including the tanks, piping, and other ancillary equipment; 30 TAC §334.10(b), by failing to make available legible copies of all required UST records for inspection upon request by agency personnel; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Administration Account Number 0065740U for Fiscal Year 2007; PENALTY: $16,330; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200800815
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2008

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Texas Facilities Commission

Request for Proposal #303-8-11122

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposal (RFP) #303-8-11122. TFC seeks a 5 to 10-year lease of approximately 3,247 square feet of office space in the Colleyville area, Tarrant County, Texas.

The deadline for questions is February 29, 2008; and the deadline for proposals is March 7, 2008 at 3:00 p.m. The award date is March 19, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=75130*.

TRD-200800824
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 12, 2008

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Request for Proposal #303-8-11128

The Texas Facilities Commission (TFC), on behalf of the Office of the Inspector General of the Health and Human Services Commission announces the issuance of Request for Proposals (RFP) #303-8-11128. TFC seeks a Five (5) or a Ten (10) year lease of approximately 9,091 square feet of office space in the Counties of Harris or Fort Bend, Texas.

The deadline for questions is March 7, 2008 and the deadline for proposals is March 21, 2008 at 3:00 p.m. The award date is March 31, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=75132*.

TRD-200800818
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 12, 2008

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Texas Health and Human Services Commission

Correction Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) published a public notice regarding the proposed Medicaid payment rates for Stereotactic Radiosurgery procedure codes in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1425). The notice listed an incorrect effective date and, as such, the February 29, 2008, rate hearing has been rescheduled. The correct notice should be as follows:

The Texas Health and Human Services Commission will conduct a public hearing on March 18, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for Stereotactic Radiosurgery procedure codes listed below. These changes are associated with Medicaid medical policy changes effective April 1, 2008. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282, and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The payment rates are proposed to be effective April 1, 2008. The proposed rates are as follows:

Type of Service*	Procedure Code	Description	Proposed Medicaid Rate
6	G0251	Linear accelerator based stereotactic radiosurgery, delivery including collimator changes and custom plugging, fractionated treatment, all lesions, per session, maximum five sessions per course of treatment	$1,080.30
2	S8030	Scleral application of tantalum ring(s) for localization of lesions for proton beam therapy	$1,249.18
F	S8030	Scleral application of tantalum ring(s) for localization of lesions for proton beam therapy	ASC Group 3
F	61795	**	ASC Group 1

***Type of Service Code Key:**
2 = surgery
6 = radiation therapy
F = ambulatory surgical center (ASC)/hospital-based ASC

****Required Notice:** The five-character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2008 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and 1 TAC §355.8121, which addresses the reimbursement methodology for ASCs/HASCs.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after February 25, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800811
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 11, 2008

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas Home Living

(TxHmL) waiver, a 1915(c) waiver to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date of the waiver amendment is September 1, 2007.

The current TxHmL waiver is approved from March 1, 2007, through February 29, 2012. The waiver provides community-based services for individuals who would require services at the level provided by an Intermediate Care Facility for Persons with Mental Retardation or Related Conditions.

The proposed waiver amendment revises reimbursement rates and adjusts the annual cost limit to be consistent with the 2008 - 2009 General Appropriations Act, which allowed the Department of Aging and Disability Services (DADS) to increase the rates for two service categories provided under this program, Community Living and Professional and Technical Supports. This revision ensures individuals are able to receive services at the same level authorized prior to the rate increase.

The amendment also revises the previously stated implementation date for the consumer directed services option from January 1, 2008, to February 1, 2008. The Consumer Directed Services Agencies providing financial management services will be reimbursed according to the revised rate methodology upon implementation of the consumer directed service option. The amendment maintains cost neutrality for each year in the remaining five-year waiver period covering 2008 through 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Carmen Samilpa-Hernandez by mail at Texas Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.samilpa-hernandez@hhsc.state.tx.us.

TRD-200800837
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 13, 2008

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Department of State Health Services

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services issued the following Agreed Orders:

-Urology Specialists of Austin (Registration Number R02986) of Austin. A total penalty of $2,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Lifecare Hospitals of Plano (Registration Number R27337) of Plano. A total penalty of $7,500 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Texas Oncology PA, d/b/a Longview Cancer Center (Registration Number R21260) of Longview. A total penalty of $5,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Broad Horizon Imaging, Inc. (Registration Number R28753) of Del Rio. A total penalty of $3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Shannon Clinic (Registration Number R03093) of San Angelo. A total penalty of $2,000 shall be paid by registration for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Terra Testing, Inc. (License Number L02464) of Lubbock. A total penalty of $2,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Austin Reeves, DPM (Registration Number R24720) of Texarkana. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Ennis Regional Medical Center (Registration Number M00719) of Ennis. A total penalty of $4,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Real Health Care - East Houston (Registration Number R21441) of Houston. A total penalty of $1,250 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Paul S. Sturm, D.D.S. (Registration Number R05907) of Uvalde. A total penalty of $1,500 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Call Hall, P.C., d/b/a Hall Chiropractic (Registration Number R11962) of Austin. A total penalty of $1,250 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Texoma Medical Center (Registration Number M00201) of Denison. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Martin G. Garcia, DDS, PC (Registration Number R13091) of San Antonio. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Meridian Plastic Surgery Center, LLC (Registration Number R29720) of Austin. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

-Austin Urological Associates (Registration Number R30148) of Austin. A total penalty of $500 shall be paid by registrant for violation of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available for public inspection, by appointment, at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200800751
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 8, 2008

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Notice of Stakeholder Meeting Concerning Abortion Facility Reporting and Licensing Rules

In accordance with Government Code, §2001.039, the Department of State Health Services (department) proposes to review and revise the Abortion Facility Reporting and Licensing Rules codified at 25 Texas Administrative Code, Chapter 139.

The department will hold a stakeholder meeting on **Friday, February 29, 2008**, from 10:00 a.m. - 12:00 p.m. at the following location: Department of State Health Services, Suite K-100, 1100 West 49th Street, Austin, Texas 78756.

This meeting is to allow stakeholders the opportunity to verbally provide any comments or concerns regarding the rules to the department. A draft of the proposed rules is available for review at http://www.dshs.state.tx.us/hfp/hottopics.shtm.

Please contact Pamela Adams, Department of State Health Services, 1100 West 49th Street, Austin, Texas, telephone (512) 834-6646, if you have questions. We appreciate your input into the rule revision process.

TRD-200800752
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 8, 2008

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Texas Higher Education Coordinating Board

Request for Proposals for Local Vertical Curricula Alignment Pilot Project

Notice requesting proposals from applicants to facilitate the process of developing a local vertical curricular alignment pilot project.

PURPOSE: To solicit proposals from qualified applicants to assist in a pilot project designed to promote high academic expectations leading to college readiness and completion that meet college readiness standards, help develop a pilot data collection system in Bexar County, and develop P-16, within-discipline faculty teams to address transition issues and develop aligned curriculum in specific fields of study for the purpose of improving instruction and student outcomes.

DEADLINE FOR TRANSMITTAL OF PROPOSALS: March 7, 2008, 5:00 p.m. CST

RFP AVAILABLE: February 1, 2008

ESTIMATED NUMBER OF AWARDS: one

PROJECT PERIOD: two-year project renewable each year

BUDGET PERIOD: 12 months

APPLICABLE REGULATIONS:

For more information, go to the THECB website, http://www.thecb.state.tx.us/reports/PDF/1455.PDF.

For proposal templates, go to the THECB website, http://www.thecb.state.tx.us/reports/DOC/1456.DOC.

TRD-200800821
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 12, 2008

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Texas Department of Housing and Community Affairs

Housing Trust Fund

2008 Homeownership SuperNOFA

Notice of Funding Availability (NOFA)

Summary

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $1,000,000 of the 2008 Housing Trust Fund (HTF) to fund homeownership activities for Texans. Funds will be made available for the rebuilding or rehabilitation of affordable housing for homeowners and gap financing or down-payment assistance for first-time homebuyers. The availability and use of these funds are subject to the State Housing Trust Fund Rules at 10 Texas Administrative Code, Title 10, Part 1, Chapter 51 ("HTF Rules") in effect at the time the application is submitted.

Allocation of HTF Funds

These funds are made available through the Housing Trust Fund and are not subject to the Regional Allocation Formula. All funds released under this NOFA shall be used to assist households earning 50% or less of the Area Median Family Income (AMFI) as defined by the U.S. Department of Housing and Urban Development (HUD), with incentive provided to serve households earning 30% or less of the AMFI. Assistance provided with these funds must be in the form of a loan to the homeowner or homebuyer.

In accordance with 10 TAC §51.8, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted by the Department on an on-going basis until all funds have been awarded or 5:00 p.m. on Friday, June 27, 2008, regardless of method of delivery. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

The maximum award amount per Applicant is $250,000 inclusive of project and administrative funds. Non-profit organizations may request up to five percent (5%) of the requested project funds for administrative costs.

The contract term for each award shall not exceed 24 months.

Eligible and Ineligible Activities

Eligible activities will include those permissible under HTF Rules at 10 TAC §51.4 and described in this NOFA.

Prohibited activities include those under HTF Rules 10 TAC §51.5.

Mortgage Assistance:

Acquisition, new construction or reconstruction costs assistance is provided to homeowners to rebuild single family housing affected by a disaster other than Hurricane Rita. Eligible homeowners must provide evidence of prior homeownership and principal residence status of the home proposed to be rebuilt. Assistance will be in the form of a zero percent (0%) interest, 30-year term, amortizing loan creating a 1st lien. All properties must meet all applicable building and safety codes, ordinances and standards, local zoning ordinances and HUD's Housing Quality Standards (HQS) at the completion of assistance. If a home is newly constructed it must also meet federal energy requirements as defined by HUD.

The maximum loan amount per homeowner is $70,000.

As an incentive to prioritize providing assistance to households earning 30% or less of the AMFI, the assistance for these households will be provided in the form of a zero percent interest (0%), 20-year deferred, forgivable loan creating a 1st lien.

Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share on the number of years of the remaining loan term.

If at any time prior to the full loan period there occurs a sale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homeowner's principal residence, the loan shall become due and payable. In the event the home is sold (voluntary or involuntary); the assisted homeowner will pay the loan balance from the shared net proceeds of the sale. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs. A copy of the HUD closing statement must be provided.

Downpayment Assistance:

Down payment and gap financing is provided to homebuyers for the acquisition of single family housing. Eligible first-time homebuyers must not have owned a home in the three (3) years prior to the receipt of assistance. Assistance will be in the form of a zero percent interest (0%) interest, 10-year deferred, forgivable loan creating a 2nd or 3rd lien. Homebuyer Counseling must be provided to each household served. All properties must meet all applicable building and safety codes, ordinances and standards, local zoning ordinances and HUD's Housing Quality Standards (HQS) at the completion of assistance. If a home is newly constructed it must also meet federal energy requirements as defined by HUD.

The maximum loan amount per homebuyer is $10,000.

As an incentive to prioritize providing assistance to households earning 30% or less of the AMFI, the assistance for these households will be provided in the form of a zero percent interest (0%) interest, 5-year deferred, forgivable loan creating a 2nd or 3rd lien.

Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share on the number of years of the remaining loan term.

If at any time prior to the full loan period there occurs a sale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homeowner's principal residence, the loan shall become due and payable. In the event the home is sold (voluntary or involuntary); the assisted homeowner will pay the loan balance from the shared net proceeds of the sale. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs. A copy of the HUD closing statement must be provided.

Rehabilitation Assistance:

Rehabilitation cost assistance is provided to homeowners to rehabilitate single family housing including architectural barrier removal. In general, the rehabilitation of a manufactured housing unit is not an eligible activity. However, the Department may consider individual homeowners' requests made through administrators on a case-by-case basis. Approval to perform the rehabilitation of a manufactured housing unit will be made at the sole discretion of the Department. Eligible homeowners must provide evidence of homeownership and principal residence status of the home proposed to be rehabilitated. Assistance will be in the form of a zero percent (0%) interest, 20-year deferred, forgivable loan creating a 1st, 2nd or 3rd lien. All properties must meet all applicable building and safety codes, ordinances and standards, local zoning ordinances and HUD's Housing Quality Standards (HQS) at the completion of assistance. If a home is newly constructed it must also meet federal energy requirements as defined by HUD.

The maximum loan amount per homeowner is $30,000.

As an incentive to prioritize providing assistance to households earning 30% or less of the AMFI, the assistance for these households will be provided in the form of a zero percent interest (0%) interest, 10-year deferred, forgivable loan creating a 1st, 2nd or 3rd lien.

Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share on the number of years of the remaining loan term.

If at any time prior to the full loan period there occurs a sale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homeowner's principal residence, the loan shall become due and payable. In the event the home is sold (voluntary or involuntary); the assisted homeowner will pay the loan balance from the shared net proceeds of the sale. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs. A copy of the HUD closing statement must be provided.

Any rehabilitation performed on housing units for accessibility modifications must be designed to meet the needs of the individual homeowner.

Eligible and Ineligible Applicants

Eligible applicants are Units of General Local Government, Nonprofit and For-Profit Organizations and Public Housing Authorities (PHA's).

Applicants may be ineligible for funding if they meet any of the criteria listed in §51.5 of the Department's HTF Rule.

Threshold Criteria

Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every applicant must be able to evidence as a threshold standard, that they can demonstrate the ability to administer the program and commit adequate cash reserves of at least $35,000 to cover any delays in the disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. This commitment must be included in the applicant's resolution.

Evidence of Prior Experience: All applicants must have at least two (2) years of experience in providing the assistance for each of the activities for which funds are requested as evidenced by current or previous contracts with funding entities for the each activity. Applicants that request funds to provide accessibility modifications must have at least two (2) years of experience in performing this specific activity and evidence the experience with current or previous contracts with funding entities for the same. To satisfy this requirement, applicants may provide evidence of a partnership with an entity or organization that meets this requirement.

Program Design: All applications submitted must include a detailed, written program design which must include proposed activities to be undertaken, marketing, method of receiving applications from prospective homeowners and homebuyers, procurement requirements (if applicable), procedures to handle complaints or grievances and a proposed timeline to complete all activities. Applicants that request funds to provide accessibility modifications must clearly describe the process and expertise to be used in determining the accessibility needs of the homeowner. The documentation submitted must include the resume(s) of

qualified and experienced staff or an agreement with a qualified and experienced third-party organization.

Resolution Requirement: All applications submitted must include an original resolution from the applicant's direct governing body, authorizing the submission of the application, committing a specific amount for cash reserves for use during the contract period and naming a person authorized to represent the organization and signature authority to execute a contract.

Review Process

Pursuant to 10 TAC §51.8, each application will be handled on a first-come, first-served basis. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. The Department will ensure review of materials required under the NOFA and Application Submissions Procedures Manual (ASPM) for threshold criteria and eligibility and will issue a notice of any Administrative Deficiencies for Applications within 45 days of the Received Date.

All applicants will be processed through the Department's Application Evaluation System and will include a previous award and past performance evaluation. Poor past performance may disqualify an applicant for funding recommendation or a funding recommendation may include conditions.

Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HTF funds before an application has been completely reviewed. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

Application Submission

The Application Guide for this NOFA will be available on the Department's website at www.tdhca.state.tx.us by February 29, 2008. Applications must be submitted on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials. Final application deadline date is 5:00 P.M., Friday, June 27, 2008.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing and Community Affairs

Attn: Ann Gusman-MacBeth, Housing Trust Fund Program Administrator

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address:

Texas Department of Housing and Community Affairs

Attn: Ann Gusman-MacBeth, Housing Trust Fund Program Administrator

HOME Division

221 E. 11th Street

Austin, Texas 78701

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per application. Please send a check, cashier's check or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee.

Applications that do not meet the filing deadline and application fee requirements will be returned to the applicant and will not be considered for funding. Application deficiencies will be processed in accordance to 10 TAC §51.8. An applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7.

This NOFA does not include text of the various applicable regulatory provisions that may be important to the Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review the HTF rules and regulations and to attend an application workshop.

Application Workshop

The Department will present an application workshop that will provide an overview of the Housing Trust Fund, application preparation and submission requirements, evaluation criteria, and program information and requirements. The application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

Audit Requirements

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

Contact Information

Questions regarding this NOFA should be addressed to:

HOME Division

Attn: Ann Gusman-Macbeth

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 475-4606

E-mail: ann.macbeth@tdhca.state.tx.us

TRD-200800840
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 13, 2008

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by GLOBAL GUARDIAN INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in El Paso, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200800873
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 13, 2008

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Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of COMPENSATION RISK MANAGERS, LLC., a foreign third party administrator. The home office is POUGHKEEPSIE, NEW YORK.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200800741
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 7, 2008

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Texas Lottery Commission

Notice of Public Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §401.312, relating to "Texas Two Step" On-Line Game, and proposed new 16 TAC §401.312, relating to "Texas Two Step" On-Line Game, will be held on Friday, February 29, 2008, at 2:00 p.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200800844
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 13, 2008

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Texas Board of Nursing

Disciplinary Sanctions for Fraud, Theft, and Deception

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have engaged in dishonest behaviors that may place the public or patients at risk. The Board is concerned with individuals who have stolen or misappropriated property, money, or other possessions from patients, who have engaged in fraudulent behavior towards patients, who have engaged in fraud towards government programs or funds, e.g., Medicare and/or Medicaid, or who have been convicted or received a judicial order involving a crime or criminal behavior of theft or deception to an extent that such conduct may be repeated in connection with the individual's practice of nursing with patients who are vulnerable, thereby affecting the nurse's ability to safely care for patients. Furthermore, the Board's policy is consistent with and supports the Governor's Executive Order RP36 dated July 12, 2004, relating to preventing, detecting, and eliminating fraud, waste, and abuse that can be found at www.governor.state.tx.us/divisions/press/exorders/rp36.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Patients frequently bring valuables (medications, money, jewelry, items of sentimental value, checkbook, or credit cards) with them to a health care facility.

4. Nurses frequently provide care in private homes and home-like settings where all of the patient's property and valuables are accessible to the nurse.

5. Nurses frequently provide care in settings without direct supervision.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

1. Theft from a patient raises serious concerns whether the nurse can be trusted to respect a patient's property/possessions in the future.

2. Theft or deception that occurs outside of the workplace, including conviction or a judicial order involving criminal behavior, may raise concerns as to whether the same misconduct will be repeated in the workplace and, therefore, place patients at risk for theft and deception.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Fraud, Theft, and Deception

Fraudulent behavior is a crime of moral turpitude. The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, limit, or revoke a license. Criminal conduct involving fraud, theft, and/or deception may also reflect a lack of good professional character (22 Texas Administrative Code (TAC) 213.27). In addition, the Board is also concerned with fraud involving government funds or programs, such as Medicare or Medicaid. This type of fraud increases the price employers pay for worker's compensation, drains the unemployment insurance fund, and steals from those in need of vital Medicaid and/or Medicare services. A conviction or a judicial order involving the criminal behaviors of fraud, theft, falsification or deception is a concern to the Board but may not in and of itself disqualify a person from licensure.

The magnitude of the behavior is not necessarily a major factor the Board will consider. Factors related to the crime that would concern the Board the most are evidence of premeditation, lack of remorse, and failure to pay restitution. The presence of these factors is evidence to

the Board that the likelihood of the same behavior being repeated is great enough that patients may be at risk for the same conduct. Acts of an impulsive nature where there is insight/remorse regarding the conduct may be mitigating factors for the Board to consider. The criminal behavior of fraud, theft, or deception will be evaluated on an individual basis considering the foregoing factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving fraud, theft, or deception, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 TAC §213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. 22 TAC §213.27 is also applicable to criminal conduct. Acts of fraud, theft, or deception will preclude a nurse from working in a home health or independent setting during the stipulation period. If circumstances do not warrant removal from that practice setting, supervision in the home health or independent setting will be required. Discipline by the Board will likely require the nurse to pay a civil penalty or fine and restitution as authorized by the Nursing Practice Act and Board rules. The Board will take under consideration any conviction or conduct that falls within the "youthful indiscretion" factors as stated in Board rules (22 TAC §213.28), factors stated in Texas Occupations Code Chapter 53 regarding criminal conviction consequences, and other factors in 22 TAC §213.27 and §213.28 (Good Professional Character and Licensure of Persons with Criminal Convictions).

Theft from a Patient

Theft from a patient or engaging in fraudulent or deceitful behavior or conduct with or involving a patient is never acceptable. Theft of patient money, property, medicine, valuables, or items of sentimental value is ground for suspension or revocation of licensure. A license may be denied if the applicant engaged in theft while functioning in the role of a care giver. Other fraudulent conduct or deception towards a patient is unacceptable, but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at a level less than revocation or may be reprimanded or warned and limited from independent settings following a thorough investigation. Factors such as insight, remorse and premeditation will be considered as to whether a disciplinary sanction is imposed. The Board believes that employers of nurses have the responsibility to have safeguards in place to ensure that patients are not subjected to acts of fraud, theft, or deception.

Theft from the Workplace

Theft is an intentional act regardless who is the victim of the theft. The Board's position on theft from an employer is not as strong as its position on theft from a patient. However, if a nurse engages in fraud, theft, or deception toward his/her employer, there is the possibility that the nurse will also engage in the same behavior towards patients. The Board will consider the factors of premeditation, remorse and restitution as well as the steps taken by the employer toward the nurse in deciding whether or not discipline should be imposed.

Petition for Reinstatement

A person who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration or reinstatement after one (1) year has elapsed. The burden of proof that the person does not pose a danger for fraud, theft, or deception toward patients remains with the petitioner or applicant.

Recommended Sanctions

The minimum allowed sanction for fraud, deceit, intentional, and/or willful misconduct that results in harm or the potential for harm to another person will be removal from practice in an independent setting, including but not limited to home health and agency nurse, practice under the supervision of another registered nurse, if practicing as a RN, or under the supervision of a licensed vocational nurse or registered nurse, if practicing as a LVN, employer reports, and a punitive fine. The recommended sanction may be revocation.

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Disciplinary Sanctions for Lying and Falsification

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who have engaged in deception in the provision of health care. This deception includes falsifying documents related to patient care, falsifying documents related to employment, and falsifying documents related to licensure. The Board is also concerned about persons who have been convicted of a crime involving deception to the extent that such conduct may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Critical care, pediatric, and geriatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.

4. Nurses are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse's own practice or conduct.

5. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care (22 TAC §213.27).

6. Patients have the right to expect that the nurse will always accurately report patient conditions, signs and symptoms, and the care the nurse provided.

The Board considers the following behaviors important in evaluating whether an individual possesses the integrity and honesty to practice nursing:

1. Falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether

the nurse will continue such behavior and jeopardize the effectiveness of patient care in the future.

2. Falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity (22 TAC §§217.12 (22), (23) and 213.27).

3. Falsification of an application for licensure to the Board raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing.

4. A conviction or judicial order involving a crime of lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Lying and Falsification

The Board may rely solely on the conviction of a crime or probation for a crime, with or without an adjudication of guilt, to deny, suspend, or revoke a license. A crime involving dishonesty is a crime of moral turpitude. Reliance on judicial orders is designed to avoid subsequent collateral attacks by nurses when the nurse has already been convicted or has admitted to the criminal conduct.

The Board has adopted a policy on fraud, theft, and deception that, in part, addresses the issues of lying and falsification. The crime of lying or falsification is a concern to the Board if the conduct involved defrauding a vulnerable person; if the occurrence was within a short period of time prior to the application for initial licensure; if there is a demonstration of a pattern of lying or falsification; or if the act was obviously premeditated and the individual demonstrates a lack of insight or remorse related to the conduct. The presence of these factors is evidence to the Board that the same behavior is likely to be repeated towards patients and may place their well-being at risk. Crimes involving lying and falsification will be evaluated on an individual basis considering the above factors.

It should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving lying or falsification, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code §213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Lying on or Falsification of Licensing Documents to the Board

Each licensure form or document, whether it is an initial application, application by endorsement, or a renewal application, contains questions that require a "yes" or "no" answer. These forms contain several questions that might affect the ability of an individual to function safely as a nurse. In addition, the Board asks the applicant, petitioner, or licensee to provide information to determine if he/she meets the practice requirements for nursing licensure. Answers to these questions are used by the Board to determine the applicant's fitness for initial licensure/recognition in regards to conviction history, physical or mental condition, chemical dependency, and eligibility to renew licensure or gain initial licensure/recognition by endorsement related to meeting the continuing education (CE) and practice requirements. The Board can understand that an applicant may mark a "yes" or "no" answer in error, or misunderstand the question being asked. The Board believes, however, that supplying false information in regards to eligibility requirements for licensure is a serious matter, not only because of the lying or falsification itself, but because those false answers would allow an otherwise disqualified applicant to be licensed. Proof of falsification on initial licensure is enough to establish the Board's right to revocation or denial of licensure. It should not be the Board's burden to answer or overcome Respondent's claims of current character or current practice once it is established an applicant or petitioner has knowingly falsified information upon which licensure was based. If Respondent believes he/she has good professional character, they should be required to start the application process over anew under non-deceptive means without the benefit of consideration of the intervening practice as a nurse.

The Board also asks questions on its applications for licensure to verify the individual's identity and provide the Board with demographic information. Falsification of that information is considered serious by the Board, but not as critical as information that directly relates to eligibility for licensure unless the falsification of this information was intended to hide relevant background information of the applicant.

Each case of falsifying an application for licensure will be considered on an individual basis. The investigative process will be used to determine whether the question was answered in error, misunderstood, or purposely answered falsely to deceive the Board. Intentional falsification may result in denial of licensure or revocation of a license. The Board may show leniency towards an applicant for initial licensure because that person may be more likely to misunderstand the questions on the application. The Board believes that an applicant for renewal of licensure should understand the questions and the importance of answering them honestly. A pattern of falsification of information on an application for licensure will not be tolerated and is grounds for revocation.

Failure to cooperate during the course of a Board investigation by supplying false documents or failing to disclose information is grounds for denial or revocation of the license. Reckless disregard for the Nursing Practice Act, the Board's rules and regulations, and/or a Board Order is also grounds for denial or revocation and will require at a minimum, the imposition of a punitive fine in addition to other stipulations.

Nurse Imposter

The Board has no jurisdiction over a person who does not have a license to practice nursing in the State of Texas yet holds him or herself out to be a nurse. The Board does have jurisdiction over an individual who has a nursing license or has had one in the past and represents him or herself as licensed for a broader scope of practice, e.g., LVN to RN, RN to APN. The Board has no tolerance for any form of impostering and will impose the maximum dollar amount of fine allowed under Board rules and may impose a disciplinary sanction. The following factors will be considered in deliberating the level of discipline from remedial education with fine through revocation: intent, potential or actual harm to patients, length of time as an imposter, and insight/remorse.

The Board believes that employers of nurses should verify licensure utilizing the Board's website and thereby avoid hiring a nurse imposter or allowing a nurse to practice beyond his/her scope. The Board may impose a disciplinary sanction to the nurse employer found responsible for hiring a nurse imposter.

Lying or Falsification within the Practice of Nursing

The safe and effective practice of nursing as a licensed vocational nurse, registered nurse, or advanced practice nurse requires integrity, accuracy, and honesty in the provision of nursing care, including:

- performing nursing assessments;

- applying the nursing process;

- reporting changes in patient condition;

- acknowledging errors in practice and reporting them promptly;

- accurate charting and reporting, whether verbal or written;

- implementing care as ordered;

- compliance with all laws and rules affecting the practice of nursing; and

- compliance with minimum nursing standards.

Failure to be accurate and honest while providing patient care and keeping accurate records related to care, is potentially harmful to the overall care patients receive because nurses who provide subsequent care do not have a complete and accurate picture of the client's care and/or condition.

Each case of lying and falsification will be considered on an individual basis. The Board will consider the following factors:

- actual harm to the patient as a result of the lying or falsification;

- the potential for harm to patients;

- the past performance record of the nurse;

- prior complaints;

- accountability for the act of falsification;

- insight;

- remorse; and

- other mitigating or aggravating factors.

The Board will also consider whether or not the nurse was unduly influenced by a more experienced or supervising licensed nurse to falsify patient records or care, in which case that nurse's conduct will be investigated by the Board. The investigative process will be used as an opportunity to educate and reinforce acceptable standards of care. Disciplinary sanctions may range from remedial education with fine to revocation. The level of sanction may be directly proportionate to the harm caused to the patient. If a nurse falsifies, alters, fabricates, back-dates records, or any other form of lying in the home health setting, the nurse will be sanctioned with stipulations, and fined. During the stipulation period, home health and any other form of independent employment settings will be prohibited. Supervision in home health will be required where circumstances do not warrant removal from that practice setting.

Lying/Falsification to an Employer, Nursing Education Program, or other Nursing Training Program

The Board believes that falsification of an application to an employer, school of nursing, or other nursing training program is generally the responsibility of the employer, school, or training program to resolve, unless the falsification involves misrepresentation of credentials, competencies or work experience. Misrepresentation of credentials to an employer will be investigated and viewed by the Board in the same way that lying or falsification within the practice is viewed. A student nurse who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that he or she will continue the same dishonest acts after licensure. If the Board is made aware of acts committed as a student, an investigation will be conducted once the student makes application for licensure. The Board will consider the same factors as described above for lying and falsification within the practice of nursing.

Petition for Reconsideration or Reinstatement of License

A person who has been denied licensure, or whose license has been surrendered, suspended, or revoked has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person no longer poses a danger for deception, lying or falsification regarding patient care, record keeping related to nursing practice, or other acts of deception remains with the petitioner.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, deletions, and modifications.)

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Disciplinary Sanctions for Sexual Misconduct

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who engage in sexual misconduct towards patients or former patients in the workplace, who have been convicted of or put on probation for sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure. The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.

2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.

3. Nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses may also care for these patients without direct supervision.

4. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability.

5. There are appropriate boundaries in the nurse-patient relationship that nurses must clearly understand and be trusted not to cross.

6. A nurse's duty to maintain boundaries extends beyond a patient's discharge from nursing care, especially when it pertains to confidential medical records.

7. Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.

8. Sexual misconduct that occurs outside of the workplace, including conviction or deferred adjudication of or probation for a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse to safely provide patient care.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Sexual Misconduct

The Board may rely solely on the conviction or deferred adjudication of a crime or probation for a crime, with or without an adjudication of guilt, to limit, deny, suspend, or revoke a license.

Sexual misconduct is a crime of moral turpitude. Crimes of sexual misconduct that involve abuse of a minor or a vulnerable person or taking advantage of another person are extremely serious grounds for denial of an initial application for licensure or revocation of the license. The length of time between the conviction and the application for licensure is not a factor due to the high recidivism rate for sex offenders, lack of empirical evidence regarding the success of treatment, and the fact that many victims do not report that a sexual offense has been committed against them. Crimes that disqualify an individual for licensure include Rape, Sodomy, Sexual Abuse, Contributing to the Sexual Delinquency of a Minor and other crimes related to children. Effective September 1, 2005, Texas Occupations Code §301.4535 requires suspension, revocation, or refusal of a license for initial convictions of certain offenses. The sexually-related offenses are as follows: sexual assault, aggravated sexual assault, indecency with a child, and any offense a defendant is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure. This includes offenses of a similar nature in other jurisdictions. Once a final conviction or a plea of guilty or nolo contendere is entered, eligibility for licensure is not available until five (5) years after successful completion and dismissal from community supervision or parole.

There are other sexual misconduct crimes that do not involve children or taking advantage of another person. There are also crimes that involve conduct between consenting adults. These crimes are considered by the Board to be of a serious nature but not necessarily a disqualification for licensure. Conviction or deferred adjudication of these crimes will be considered on an individual basis with regard to the circumstances surrounding the crime and may involve a forensic psychological evaluation with a sexual predator component - the sex MMPI, as well as a polygraph. This evaluation is to be performed by a Board approved psychologist or psychiatrist with forensic credentials who has expertise in evaluating sexual offenders.

Finally, it should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving sexual misconduct, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code §213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Sexual Misconduct Toward Patients

Sexual misconduct toward patients is never acceptable. Conduct such as rape, sex disguised as treatment (unnecessary or prolonged pelvic/breast/genital exams or touching intimate body parts when the touch is not necessary for care) and "sneaky sex" (surreptitious touch, voyeurism, or exposing the patient's body when not necessary) are grounds for limitation, denial, or revocation of licensure. Nurses should never engage in conduct with a patient that is sexual or may reasonably be interpreted as sexual or in any behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient. Even if a patient initiates the sexual contact, a sexual relationship is still considered sexual misconduct for the nurse. The nurse should never use the patient to satisfy the nurse's need for personal amusement, gratification, power, control, sexual stimulation or satisfaction. It is always the responsibility of the nurse to establish appropriate boundaries with present and former patients. Other sexual misconduct such as sexual harassment of a patient, verbal interaction of a sexual nature, or a romantic-like relationship with a patient are unacceptable but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at the level of a Reprimand or Warning following a thorough investigation.

Some factors to be considered are the length of time between the nurse-patient relationship and the personal relationship, the nature of the therapy the patient received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the patient, or the former patient, will need therapy in the future, and the risk to the patient. Subsequent conduct of a similar nature indicates a pattern and may require revocation. The Board believes that employers of nurses have a responsibility to discourage this conduct and take measures to ensure that patients are not subjected to this conduct.

Consensual sex between a nurse whose relationship or past relationship with the patient is that of a mental health therapist is serious and not acceptable to the Board. The nature of the therapist nurse-patient relationship places the patient, or former patient, in a vulnerable position and raises the question of ability for true consensual sex on the part of the patient. This conduct is grounds for limitation, denial, or revocation of licensure. Consensual sex between a nurse and a former patient often involves exploitation by the nurse of the former patient's vulnerability and may be evidence of violations of appropriate nursing boundaries. Some factors to be considered are the length of time between the nurse-patient relationship and the personal relationship, the nature of the therapy the patient received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the patient or the former patient will need therapy in the future, and the risk to the patient.

Sexual Misconduct in the Workplace - Not Toward Patients

The Board's mission is protection of the public. The Board is not charged with protecting nurses, and therefore, believes that sexual misconduct in the workplace is the responsibility of the employer. If sexual misconduct in the workplace occurs in view or hearing of a patient or may affect the patient's care or feeling of safety, the Board believes this conduct should be treated the same as similar conduct towards a patient as described above. However, should any conduct lead to a criminal charge, conviction, or deferred judicial action, the Board should be notified.

Petition for Declaratory Order, Reconsideration, or Reinstatement of License

An individual who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration of the Board's decision to deny or revoke the license. The burden of proof that the individual no longer poses a risk to the health, safety, and welfare remains with the petitioner. At a minimum, the petitioner must show evidence of successfully completing treatment specific to sexual misconduct. Additionally, the petitioner may be denied licensure without submitting a current forensic evaluation that addresses risk for re-offense, and includes recommendations on limitations in practice, patient population cared for, work setting and other issues related to the problem which originally brought the individual to the Board's attention. A polygraph exam may be included as part of the evaluation. The evaluator must be a health care professional whose credentials and expertise are approved by the Board. The recommended disciplinary or eligibility determination by the Board for sexual misconduct may be revocation or denial of licensure.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, modifications, and/or deletions.)

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Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder

The Texas Board of Nursing (Board), in keeping with its mission to protect public health, safety, and welfare, believes it is important to have a clear position on how it will deal with nurses who are reported to the Board because they have:

(1) been diagnosed with substance dependency or abuse, but do not have evidence of current sobriety that dates back a minimum of twelve (12) consecutive months;

(2) exhibited impaired behavior that may be related to substance abuse, misuse, or intemperate use;

(3) demonstrated a pattern of use of addictive substances or pattern of substance mishandling or abuse;

(4) shown evidence of criminal behavior or acts involving substances of addiction/abuse; or

(5) any combination or single factor listed above, whether or not the events reported to the Board occurred while a nurse was on duty.

Any of the above substance-related conditions may affect the ability of a nurse to safely perform nursing duties, thus creating a threat to public safety.

This policy applies to all nurses or those individuals seeking to obtain or regain licensure as a nurse in Texas.

The Board adopts the following assumptions as the basis for its position:

(1) Patients[1] under the care of a nurse are vulnerable by virtue of illness or injury and the dependent nature of the nurse-patient relationship.

(2) Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled and immobilized.

(3) Critical care, geriatric, and pediatric patients are particularly vulnerable given the level of vigilance demanded under the circumstances of their health condition.

(4) Nurses are able to provide care in private homes and home-like setting without direct supervision.

(5) Nurses who have active substance dependence or who abuse, misuse, or engage in intemperate use of drugs or alcohol or other substance use disorder may exhibit impairment in both cognitive and motor functioning while caring for patients. Such impairment places patients at risk for harm due to the nurse's inability to accurately assess, make appropriate judgments, and intervene in a timely manner to stabilize the patient(s) and prevent complications.

(6) The disease of substance dependence or other substance use disorders as noted above may range in severity; however, the Board believes all are potentially treatable conditions. Nurses who are in active recovery may be able to safely provide care to vulnerable patients, provided the nurse's practice can be adequately monitored for a defined period of recovery.

(7) Recovery is a process of learning new behaviors, attitudes, and life style that takes time after initial treatment to assure that the person is in a stable and sustainable state of recovery.

The Board believes it has a responsibility to both the public and the nurse when information about a nurse's substance use disorder comes to the Board's attention. The responsibility to the public is for swift action to remove a nurse from performing duties involving direct patient care until the nurse is deemed safe to return to those duties. The Board's responsibility towards the nurse is to recognize that person's past service in the provision of patient care and give that person an opportunity to seek treatment at an approved treatment facility[2] for the substance use disorder and then return to providing patient care when able to submit verifiable, documented proof that he/she has a year of sobriety and is in stable recovery.

If the Board finds disciplinary action is warranted, under no circumstance will a nurse be eligible for an unencumbered license until the nurse has successfully completed an approved treatment program, plus a year of verifiable, documented sobriety and subsequent probationary monitoring by the Board for a minimum of three (3) years. If a nurse fails to maintain compliance with the Board order, the Board will accept the voluntary surrender of the nurse's license or the Board will seek revocation subject to the Administrative Procedures Act, Nursing Practice Act, and Board rules.

Impairment in the Workplace

A nurse may demonstrate impaired behavior in the workplace due to consumption of drugs and/or alcohol either before coming to work or during work hours. The Board encourages both employers and coworkers of nurses to be familiar with the myriad of signs and symptoms associated with impairment and to report suspicion of impairment so the nurse can be removed from a patient care assignment and the risk of harming patients.

The Board would encourage facilities, agencies, and others who employ or utilize nurses to implement policies requiring "for cause" drug screens to eliminate the often unverifiable claims by the facility regarding suspected workplace impairment of the nurse. Impairment or suspected impairment of a nurse's practice by drugs or alcohol should be reported to the state peer assistance program for nurses or the Board for investigation (Tex. Occ. Code Ann., §301.401). The Nursing Practice Act requires that a person report to the Board a nurse suspected of being impaired by chemical dependency or diminished mental capacity if the person believes that an impaired nurse committed a practice violation. A nurse need not be "diagnosed" with an addictive/abusable or dependence problem to be reported to the Board for impaired behavior and/or practice.

Nurses may obtain medications or other substances through theft from the facility or from a patient in a home or home-like setting. Theft of drugs or other substances by a nurse must be investigated as it raises the question of inappropriate use of drugs or other substances that have the potential and are likely to impair a nurse's practice, thus raising the risk of harm to patients.

A nurse who fails to participate in or complete the state peer assistance program for nurses and is reported to the Board for impairment in the

workplace or diversion of drugs will be requested to obtain a chemical dependency evaluation[3] from an evaluator who possesses credentials approved by the Board.[4] Under no circumstance will an evaluation by a Licensed Chemical Dependency Counselor (LCDC) be deemed as acceptable proof that a nurse does not have a substance abuse or dependency diagnosis. If the person is diagnosed as chemically dependent, the nurse may be given the opportunity to enter an approved treatment facility; provide proof of verifiable, documented sobriety for the preceding twelve (12) month period; and participate in Board monitoring for at least three (3) years.

If the state peer assistance program for nurses determines that a nurse is ineligible for its program, a nurse may be eligible to return to work under monitoring conditions determined through a suspend/probate agreement with the Board if he/she has verifiable, documented proof of sobriety for the previous twelve (12) consecutive months and successful completion of a treatment program within the past six (6) months and subsequent to the last relapse. At a minimum, those conditions will include an enforced suspension until a year of verifiable recovery and sobriety with supporting documentation and successful completion of an approved treatment program with a recommendation from the treatment program regarding fitness to return to work.

The nurse will be required to provide proof of working an active program of recovery, employer monitoring by another nurse, employer evaluations of performance, abstinence from drugs and alcohol unless prescribed by a licensed provider for a legitimate purpose with notification to the Board, random drug testing, proof of support group attendance for a period of at least three (3) years, and may be limited in practice settings and in his/her access to controlled substances in the workplace. A nurse who is not willing or able to attend and complete treatment will be offered the opportunity to voluntarily surrender his/her license or will be served with Formal Charges and be given the opportunity for a hearing as provided in the Administrative Procedure Act, Nursing Practice Act, and/or Board rules.

If the person does not receive a diagnosis of chemical dependence, the Board will take any recommendations of the evaluator into account, i.e., pain or disease management and/or mental health issues and determine whether or not a period of monitoring by the Board is in the best interest of public health and safety. In addition, if the evaluator determines that the nurse has a pain management, disease management, or mental health issue, the nurse will be sent to an appropriate specialist or clinic approved by the Board for evaluation and additional recommendations. If the evaluator determines that the individual has a low probability for substance abuse, but the evidence supports practice violations that relate to the drugs at issue, the Board will determine whether or not a period of monitoring is necessary to ensure public safety and welfare.

Crimes Related to Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder

The Board may rely solely on the conviction for a crime or probation for a crime, with or without an adjudication of guilt to impose a disciplinary sanction on a nurse. In addition, evidence of the conduct that is the basis for the court's judgment may be of concern to the Board in that it implicates a nurse's professional character pursuant to 22 TAC §213.27 (Good Professional Character). The Board will also consider a pattern of arrests for crimes related to substance abuse in regards to a pattern of behavior that may be of concern to the Board. The fact that a person has been arrested will not be used as grounds for disciplinary action. If, however, evidence ascertained through the Board's own investigation from information contained in the arrest record regarding the underlying conduct suggests actions violating the Nursing Practice Act or rules of the Board, the Board may consider such evidence as a factor in its deliberations regarding any decision to grant a license, restrict a license, or impose licensure discipline.

Crimes related to substance abuse, misuse, substance dependency or other substance use disorder range from those that are primarily harmful to the nurse to those that are harmful to others. Nurses who have committed crimes such as Minor in Possession of Drugs/Alcohol, Possession of a Controlled Substance, Driving Under the Influence of Intoxicants, or Driving While Intoxicated will be required to obtain an evaluation by an evaluator with credentials approved by the Board[4] to determine if the person has a diagnosis of chemical dependence. Under no circumstance will an evaluation by a Licensed Chemical Dependency Counselor (LCDC) be deemed as acceptable proof that a nurse does not have a substance abuse or dependency diagnosis. The Board may additionally use the results of that evaluation to determine fitness to function as a nurse and whether monitoring by the Board is necessary for protection of the public.

Nurses who have committed crimes that are clearly a danger to others, such as Manufacture and Distribution of a Controlled Substance or Conspiracy to Distribute Illegal Drugs will be considered on an individual basis and may be required to complete a drug and alcohol or forensic psychological evaluation. The Board views crimes related to substance abuse that are harmful to others as more serious than those where harm is directed mainly at the nurse. If the individual facts of a case show harm to others, the Board will serve Formal Charges against the nurse; and the nurse will have the opportunity to a formal hearing as provided in the Administrative Procedures Act, Nursing Practice Act, and/or Board rules. It should be noted that, if a nurse is imprisoned following a felony conviction; felony community supervision revocation; revocation of parole; or revocation of mandatory supervision for a crime involving drugs, alcohol, or substance abuse, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 TAC §213.28 govern the consequences of criminal convictions; and Chapter 53 requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of Title 22 in TAC is also applicable to criminal conduct.

Petition for Reinstatement of License

A nurse whose license has been revoked or suspended or who has voluntarily surrendered his/her license due to chemical dependence or crimes related to substance abuse has the right to petition the Board for reinstatement of the license after one (1) year has elapsed from the effective date of the Board action, unless agreed otherwise. The burden of proof will be on the license holder that he/she is in recovery from chemical dependence; no longer abuses drugs or alcohol; and has been rehabilitated to the extent that he/she no longer poses a threat to the public health, safety, and welfare.

Evidence of Verifiable Sobriety

It is highly recommended that evidence of sobriety include random drug screens, letters, and evaluations from present and past employers, and signed logs of support group attendance. Should the Board reinstate licensure, the nurse may be required to take a refresher course before a license is issued to him/her.

[1] The terms "resident" or "client" are often used interchangeably with the term "patient" in health care facilities. For the purpose of this policy, the term "patient" includes all of these terms.

[2] An approved treatment facility means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the Department of State Health Services, or a facility licensed or operated by the Department of State Health Services. The term does not include an educational program for

intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office. Tex. Health & Safety Code, §461.002(9).

[3] A chemical dependency evaluation requires:

(a) a release signed by the nurse that allows the Board to send the investigatory file to the evaluator for review prior to the evaluation;

(b) a release that allows the evaluator to send the evaluation directly to the Board;

(c) a review of the Board's investigatory file by the evaluator prior to the evaluation;

(d) administration of an SASSI-III and/or MAST test by the evaluator; and

(e) a face-to-face interview between the evaluator and nurse.

[4]An evaluator must demonstrate that they hold a current professional license and also possess the credentials for the provision of treatment for chemically dependent individuals. A physician, a medical doctor (M.D.) or osteopathic (D.O.), who is certified by the American Society of Addiction Medicine (ASAM) should be considered when the nurse/applicant does not believe/acknowledge that he/she abuses chemicals and has current indicators that suggest they may abuse chemicals and concurrent medical issues put them at risk for abuse/dependency. Examples of medical issues that may put one at risk for abuse and/or dependence include: a history of chronic pain; a history of migraines; fibromyalgia; and/or any other ongoing medical or dental event which has required frequent or long-term narcotic analgesics. An additionist who is doctorally prepared and who specializes in diagnosing and treating chemical dependency should be considered when the nurse/applicant does not believe/acknowledge the abuse of chemicals, but has current non-medical related indicators that suggest that he/she may abuse chemicals. Other licensed treatment evaluators may be approved for evaluation and recommendations for treatment when the nurse/applicant acknowledges being active or recently having been active in the disease of chemical dependency (the individual acknowledges being chemically dependent and, therefore, the evaluation is related to treatment, not diagnosis).

In cases where a judicial order or a criminal conviction is at issue, the Board reserves the right in these situations and others involving criminal activity to request a forensic psychological evaluation with a chemical dependency component. In all cases, whether criminal or not, if additional diagnosis or therapy information is needed, the Board may request additional evaluations.

See Policy on Board-Approved Treatment Providers, (approved October 21 - 22, 2004--Agenda Item 7.9).

Original policy adopted on July 26, 2002, amended on April 25, 2003, and revised on April 23, 2004 and January 18, 2008 (based on recommendations adopted by the Eligibility and Disciplinary Task Force on November 30, 2007).

TRD-200800874
Joy Sparks
Assistant General Counsel
Texas Board of Nursing
Filed: February 13, 2008

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Aransas County

On March 27, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the purchase of approximately 0.60 acre at the Coastal Fisheries Maintenance Complex in Rockport, Aransas County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or made in person at time of meeting.

TRD-200800817
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 12, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 4, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35309 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City of Crowley, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35309.

TRD-200800807
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2008

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on February 5, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications to Amend a State-Issued Certificate of Franchise Authority, Project Number 35318 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Tuscola, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35318.

TRD-200800808
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 4, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of BetterWorld Telecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35313 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, DSL, T-1 Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 27, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35313.

TRD-200800806
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 11, 2008

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On February 8, 2008, New Access Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60458. Applicant intends to relinquish its certificate.

The Application: Application of New Access Communications, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 35350.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 27, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35350.

TRD-200800820
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 12, 2008

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South East Texas Regional Planning Commission

Request for Services

Consulting services will consist of the following tasks:

1. Consultant will provide one day training to housing staff of the Orange Regional Home Consortium and such other persons as the Home Consortium may require. The training content shall be determined by the parties as least six weeks in advance of the proposed training to meet the needs of the Consortium.

2. Consultant will provide ongoing technical services to the Orange Regional Home Consortium on an on-demand basis. Technical services shall include up to three site visits during the term of the contract.

Contact: Mike Foster, Community Development Director, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703, mfoster@setrpc.org, (409) 899-8444, ext. 256.

Closing Dates: If your company is interested and qualified to provide professional services to the Orange Regional Home Consortium, please contact Mike Foster via letter or e-mail addressed to Mike Foster, 2210 Eastex Freeway, Beaumont, Texas 77703 or mfoster@setrpc.org. All responding companies will receive a complete Request for Qualifications package. Final proposals will be due by 12:00 noon, CST on December 1, 2007.

Proposals will be reviewed based on Consultant Selection Criteria included in the Request for Qualifications package mailed to interested parties.

TRD-200800735
Shaun P. Davis
Executive Director
South East Texas Regional Planning Commission
Filed: February 6, 2008

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Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide assistance in the development of an updated student housing plan. The Notice of Availability was filed in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7147)

The contract was awarded to MGT of America, Inc., 2123 Centre Ponte Blvd., Tallahassee, FL 32308, for a fixed fee of $91,544.00.

The beginning date of the contract is January 7, 2008, and the ending date is April 20, 2008.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please contact Sam Smith, Director of Student Services/Student Center, Stephen F. Austin State University, P.O. Box 13056, Nacogdoches, TX 75962, (936) 468-3403.

TRD-200800793

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 8, 2008

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Texas Department of Transportation

Notice: Record of Decision

A Record of Decision (ROD) has been issued for the Final Supplemental to the Environmental Impact Statement (FSEIS) for the department's Roadside Pest Management Program (PMP).

The PMP is a vital part of the department's maintenance operations. The FSEIS focused on updating the chemicals utilized by the department and the techniques used in their application. The ROD can be viewed at **www.dot.state.tx.us/publications/maintenance.htm**. A copy can also be obtained by contacting Dennis K. Markwardt, Maintenance Division, Texas Department of Transportation, 150 East Riverside Drive, Building 150, Fifth Floor, Austin, Texas 78703. Mr. Markwardt can also be reached by telephone at (512) 416-3093 or e-mail at dmarkwt@dot.state.tx.us.

TRD-200800822
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 12, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).